

United States

Vol 2307

Circuit Court of Appeals

For the Ninth Circuit.

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see Vol
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NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,

Respondents.

Transcript of Record

In Seven Volumes

VOLUME III

Pages 981 to 1450

FILED

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**PAUL P. O'BRIEN,
CLERK**

Upon Petition for Enforcement of An Order of the
National Labor Relations Board

No. 10148

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W. R. JOHNSTON

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously sworn, was further examined and testified as follows: [258]

Direct Examination

Q. By Mr. Mouritsen: Mr. Johnston, since your lay-off of November 17th, 1938, have you had any other employment? A. No, sir.

Q. Have you received any money for work that you have done since that date? A. No, sir.

Q. If the National Labor Relations Board should order your re-instatement with back pay, would you be willing to accept employment with the J. G. Boswell Company? A. Yes, sir.

Mr. Mouritsen: That is all.

Mr. Clark: No further questions.

(Witness excused.)

Mr. Mouritsen: Call O. L. Farr.

O. L. FARR

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of O. L. Farr.)

Direct Examination

- Q. By Mr. Mouritsen: What is your name?
A. O. L. Farr.
- Q. Where do you live?
A. 418 East Tenth Street, Hanford, California.
- Q. Have you ever been employed by the J. G. Boswell Company? [259] A. Yes, sir.
- Q. When were you first employed by that Company?
A. September, 1936.
- Q. What work did you first do for that Company?
A. Ginner.
- Q. At what rate of pay were you paid?
A. 45 cents an hour.
- Q. What hours did you work?
A. Twelve hours a day.
- Q. How long did you continue to work as a ginner for that Company?
A. Well, I worked as a ginner until in January of '38, I guess. I was transferred—
- Q. (Interrupting): Continue.
A. (Continuing): —into the oil mill.
- Q. And what work did you do in the oil mill?
A. I first filed saws.
- Q. Was there any change in your rate of pay or your hours of work at that time? A. No.
- Q. How long did you continue to do that type of work?
A. Some two or three months.
- Q. And what work did you next do?
A. As best I recall, I repaired some in the oil mill.

(Testimony of O. L. Farr.)

Q. Repaired what? [260]

A. The machinery.

Q. And how long did you do that?

A. Until the mill started in operation again.

Q. Can you fix the date of that, approximately?

A. No, I couldn't.

Q. I believe you stated that you started to file saws in January of 1938. Was that the year, 1938, or the year——

A. (Interrupting): '37.

Q. 1937? A. '37.

Q. And then after that, you——

A. (Interrupting): I repaired and run the linters, linterman. [261]

Q. And until what time did you run the linters?

A. I run the linters until July 19th, at the end of the '37 season.

Q. Yes. That was until July 19, '37?

A. Yes, sir.

Q. Then what did you do?

A. I quit and went to the San Joaquin Cotton Company at Bakersfield.

Q. And how long did you work there?

A. Four months.

Q. Then what did you do?

A. I came back to the Boswell Company on October 15th—November 15, 1937.

Q. And what work did you then do?

A. I ginned. I went back as ginner. I dried

(Testimony of O. L. Farr.)

some cotton and ginned at the time. At different times—I dried some cotton at different times and was hired as a ginner.

Q. What rate of pay did you receive?

A. 50 cents an hour.

Q. What hours did you work? A. 12 hours.

Q. That is, 12 hours a day?

A. Yes, 7 days a week.

Q. Now, how long did you work as a ginner since you came [262] back in November of 1937?

A. Until January, '38, 1938.

Q. And what work did you then do?

A. I went back as linterman in the oil mill.

Q. Any change in rate of pay or hours of work?

A. No, sir.

Q. How long did you continue to work as a linterman?

A. Until September 28, 1938, at the time the season of that year was completed of crushing seed.

Q. And then what did you do?

A. I asked for a vacation to go see my folks. My father was sick, and I asked Mr. Hammond for a vacation.

Q. Did he consent to your taking a vacation?

A. Yes.

Q. Did you take a vacation? A. Yes.

Q. How long were you gone?

A. About 15 or 18 days.

Q. Did you then return to the employ of the company? A. Yes, sir.

Q. On approximately what date?

(Testimony of O. L. Farr.)

A. About the 15th of October.

Q. And the year? A. Of '38.

Q. And what type of work did you do then? [263]

A. I ginned, as a ginner. Operated the gin.

Q. Any change in your rate of pay or hours of work? A. No.

Q. How long did you continue to do that work?

A. Until the 18th of November, 1938.

Q. Yes.

Now, during the time that you were employed by the J. G. Boswell Company did you ever have any conversations regarding the union with Gordon Hammond? A. I did.

Q. Do you recall any specific conversation that you had with Mr. Gordon Hammond?

A. Yes, in the latter part of August, 1938.

Q. Where did this conversation take place?

A. In the office of Mr. Hammond, the superintendent of the Boswell Company.

Q. Was anyone else there other than you and Mr. Hammond? A. That is all.

Q. Will you state what Mr. Hammond said to you and what you said to Mr. Hammond at that time?

A. Mr. Hammond asked me if I was a member of the union—and that he heard I was a member of the union and was carrying a receipt book on the job signing up members, and that I was active in the union.

Mr. Clark: And what was the last? [264]

(Testimony of O. L. Farr.)

The Witness: And that I was active in the union, in organizing a union.

And I said, "Mr. Hammond, I will answer the questions as you asked me. I am not a member of the union at this time and I have not carried any receipt book on the job and I haven't signed up nobody in the union."

And he said, "Well, you can hear most anything. I just wanted to know."

And he asked me if I was satisfied with my working conditions. And I told him I wasn't satisfied with the hours, 84 hours a week; that was more hours than I personally felt that a man ought to work. [265]

He said that he knew—he might have misunderstood those Mexicans in some ways, he knew they were ignorant of a Union, and a fellow could talk them into most anything. And I told him at that time I hadn't said anything to the Mexicans that worked in the mill about organization.

Q. By Mr. Mouritsen: Do you recall whether or not anything was said at that conference regarding the cooperation of the Company?

A. Yes. I told him that—Mr. Hammond—that we could get together. We didn't have to have a Union if the Company wanted to get together, that we and us fellows and he could figure out a better working condition. And he agreed with me that it could be done.

Q. When you say "he agreed with me," did he—

(Testimony of O. L. Farr.)

A. He stated that could be done.

Q. During the course of your employment with the Boswell Company, did you ever have any conversation with Joe Hammond regarding the Union?

A. Yes.

Q. When did that conversation take place?

A. About the last of September, 1938, or just before the mill shut down.

Q. Was anyone else present other than you and Mr. Joe Hammond?

A. No, that was all.

Q. Where did this conversation take place? [266]

A. In the lint room of the old mill.

Q. Who is Joe Hammond?

A. Well, he is the oil mill foreman.

Q. I believe you stated that he worked in the—that you worked as a linterman in the oil mill; is that correct?

A. Yes.

Q. Will you describe or tell us what connection Joe Hammond had with that work while you were so engaged?

A. He told me what to do.

Mr. Clark: Now—withdraw that, Mr. Examiner.

Q. By Mr. Mouritsen: Continue.

Mr. Clark: Did you get the answer? It was, "he told me what to do."

The Witness: Yes, sir, he told me what to do.

Q. By Mr. Mouritsen: Did he have any other connection with your work in the linter room other than telling you what to do?

A. That is all. Of a night—while I was working nights, when Joe got ready to go home in the evening,

(Testimony of O. L. Farr.)

he would tell me what to do that night, if there was anything that needed to be done. He would come in and tell me in the evening what to do.

Q. Now, returning to the conversation, will you state the conversation that you had with Mr. Joe Hammond?

Mr. Clark: Objected to, Mr. Examiner, on the ground it is [267] hearsay, incompetent, irrelevant and immaterial; not binding on any of these Respondents, particularly upon the Respondents Corcoran Telephone Exchange and Associated Farmers of Kings County, Inc., and not binding on the Respondent Boswell and Company for the reason that no authority has been shown from the Company to Mr. Joe Hammond to speak for it with relation to the matters under investigation in this hearing.

Trial Examiner Lindsay: He may answer, and you may have an exception.

The Witness: What was the question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: Joe came and he asked me—he said, “What are you and Martin going to do when the mill shuts down?”

And I said, “I guess I will work in the gins as I always have.”

And he said, “I can’t use you any longer in the mill.”

And I said, “Well, since when?”

And he says, “From now on when the mill shuts down.”

(Testimony of O. L. Farr.)

And I said, "I always have worked."

And he said, "But you never belonged to a Union before this time."

Mr. Clark: May I have the date of this conversation again?

Trial Examiner Lindsay: Yes, you may.

The Witness: The latter part of September, 1938. [268]

Q. By Mr. Mouritsen: Now, did you ever have any conversation with Mr. Tom Hammond regarding the Union?

A. On November 17th, 1938, I did.

Q. Yes.

And who is Mr. Tom Hammond?

A. He is the foreman of the gin. [269]

Q. Now, you stated that you had——

Mr. Clark (Interrupting): He is what?

Mr. Mouritsen: Foreman of the gin.

Q. You stated that you had worked as a ginner for the company for several periods, is that correct?

A. That is right.

Q. Now, will you state what connection Mr. Tom Hammond had with your work as you worked as a ginner at the company?

A. He told me, give me orders how to gin the cotton, what cotton to gin, whatever might be needed, as a foreman would give a ginner.

Q. Did he ever tell you when you were to come to work or when you were to stop work?

A. Yes, he told me.

(Testimony of O. L. Farr.)

Q. On more than one occasion?

A. Oh, yes, all the time; if we made any change, he always told me.

Q. Now, where did this conversation with Mr. Tom Hammond take place?

A. In the cotton gin, No. 2, at the Boswell plant.

Q. Was anyone else present other than you and Mr. Tom Hammond?

A. No, not—Mr. Spear was in the gin, but wasn't very close to us at our conversation.

Q. Now, will you tell us what you said to Tom Hammond on [270] this occasion and what he said to you?

Mr. Clark: Objected to, may it please the Examiner, as hearsay and not binding on any of the respondents and in connection with the Boswell Company upon the further ground that no authority has been shown from the company to Mr. Hammond to speak for it with regard to the matters under investigation in this hearing.

Trial Examiner Lindsay: He may answer.

The Witness: About 1:00 o'clock on the 17th of November, 1938, Tom Hammond came to where I was feeding the overflow up in the gin, and he was very—seemed to be very mad, angry—

Mr. Clark (Interrupting): I move that that go out, may it please the Examiner, on the ground it is a conclusion of the witness, "He seemed to be very mad or angry." I take it the witness' testimony can only go to a description of objective conditions.

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: Just a moment: I believe that the witness has a right to describe the appearance of anyone——

Mr. Clark (Interrupting): Objectively, yes, Mr. Examiner, but that his conclusion of someone seeming to be very angry——

The Witness (Interrupting): He was very angry.

Mr. Clark: I move that go out.

Mr. Mouritsen: Mr. Farr, wait until the objection is ruled upon. [271]

Trial Examiner Lindsay: Tell us what you noticed.

The Witness: Well, he asked me in the meeting that we had held the night before, after we had—was we trying to take his job; from the statements that he had heard that we had made in the office before Mr. Gordon Hammond on that morning, that we was trying to get his job.

I told him no, that they wasn't nobody wanting his job, however.

He said it seemed like they had been trying to contradict him in his job—he was worried about his own job, and I told him—he said if I wanted his job I should go down and see Mr. J. G. Boswell.

I told him I didn't want his job, I didn't have any idea of that, I had a job of my own and I was qualified to take care of it.

Then he said, well, if he was wrong he was sorry, but he said, "We are going to straighten this out tomorrow."

(Testimony of O. L. Farr.)

He turned around and walked over to Mr. Spear and turned back to me—"There is one question I would like to ask you, if you will answer it."

And I said, "If I know it, I will."

He says, "Is Steve Griffin a member of the union?"

I said, "He is." And that was all.

Q. By Mr. Mouritsen: Now, prior— [272]

Mr. Clark (Interrupting): I move to strike that conversation, Mr. Examiner, upon the ground it is hearsay, not binding upon any of the Respondents and upon the specific ground, with respect to the Boswell Company, there has no authority been shown by the Company to Mr. Tom Hammond to make the statements testified to by the witness, on its behalf.

Trial Examiner Lindsay: I understand that Tom Hammond is a foreman of the gin department.

Mr. Clark: There still is no evidence—

Trial Examiner Lindsay (Interrupting): He may answer.

Mr. Clark: I take it the motion is denied? It was a motion to strike.

Trial Examiner Lindsay: The motion is denied.

Q. By Mr. Mouritsen: Prior to that conversation that you had on or about November 17th, 1938 with Mr. Tom Hammond, had you had, as a member of the Union committee, visited Mr. Gordon Hammond on the morning of that day?

A. I had.

(Testimony of O. L. Farr.)

Mr. Clark: May I have the date of that, please, Mr. Examiner? I missed it.

Is this the same date, November 17th?

Mr. Mouritsen: Yes, that is correct.

Mr. Clark: This is another conversation?

Mr. Mouritsen: That is correct.

Mr. Clark: Very well. [273]

Q. By Mr. Mouritsen: And did you understand that Tom Hammond was referring to the earlier meeting with Gordon Hammond when he spoke of a meeting with Gordon Hammond in his conversation with you? A. I did.

Q. Now, during the month of September, 1938, did you ever have any conversation with Tom Hammond regarding the Union? A. Yes. Tom——

Q. (Interrupting): Now, just answer yes or no.

A. Yes.

Q. Now, where did that conversation take place?

A. Close to the seedhouse, between the seedhouse and the oil mill.

Q. That is in the plant of J. G. Boswell Company? A. J. G. Boswell.

Q. Was anyone else present other than you and Tom Hammond? A. That is all.

Q. What did Mr. Hammond say to you at that time, and what did you say to Mr. Tom Hammond?

Mr. Clark: Objected to upon the ground it is hearsay, Mr. Examiner, and not binding upon any of the Respondents in this matter; with respect to the Respondent, Boswell Company, specifically, that

(Testimony of O. L. Farr.)

there is no authority shown in this record from the Company to Mr. Tom Hammond to speak for it with relation to any of the matters under investigation in this pro- [274] ceeding.

Trial Examiner Lindsay: He may answer.

The Witness: He asked me if I was a member of the Union. I told him I was, and he asked me who else. I told him that I didn't give out any information, that we didn't discuss our Union activities on the job; if he wanted to know if I was a Union man, at that time I was a Union man, in September.

Q. In that conversation did he make any suggestion to you that you obtain other employment?

Mr. Clark: Same objection.

Trial Examiner Lindsay: He may answer.

The Witness: He said if I wanted to belong to a Union, he thought that I should go where there was a Union, that the Company didn't want any Union there, over there.

Q. By Mr. Mouritsen: I believe you stated that you worked for the J. G. Boswell Company until November 18th, 1938; is that correct?

A. Yes.

Q. Did something occur upon that date—

A. (Interrupting): It did.

Q. (Continuing): —which caused your employment to cease with the Company?

A. Yes, sir.

Q. Did you work on the morning of November 18th, 1938?

(Testimony of O. L. Farr.)

A. Until 10:00 o'clock, approximately 10:00 o'clock.

Q. Will you state what occurred at 10:00 o'clock? [275]

A. Well, the cotton from the dryer quit coming to my gin, and I started out to see what was the trouble, and met Mr. Bill Robinson.

Q. Who is Bill Robinson?

A. Well, he is foreman around the gins, repairman, or something. He helped fix the gins, told you what to do on the gins when there was something to do in the way of repair. I figured him as a kind of trouble-shooter and foreman of the gin. He would give you some orders.

Q. State what conversation you had with Robinson, and what he said to you?

Mr. Clark: Objected to upon the ground it is hearsay, Mr. Examiner, and not binding upon any of the Respondents in this proceeding, and with respect to the Respondent, Boswell Company, that no authority has been shown from the Company to Mr. Bill Robinson to speak for it with relation to any of the matters subject to this investigation.

Trial Examiner Lindsay: He may answer.

The Witness: He said—I says, “What is the matter?” He says, “We are going to shut the gin down for a little meeting outside.”

He helped me shut the machinery down. I said. “Bill, what is the idea?”

(Testimony of O. L. Farr.)

“They will tell you about it outside. It is about the Union.” [276]

Q. By Mr. Mouritsen: Was that the end of the conversation? A. Yes, sir.

Q. Then what did you do?

Q. Mr. Robinson walked upstairs, and I walked out of the back door of the gin—the side door of the gin.

Q. Will you state what you observed at that time?

A. I walked out, and there was approximately sixty men outside of the gin, employees of the Company, farmers——

Mr. Clark (Interrupting): What was that word, Mr. Examiner?

Trial Examiner Lindsay: Farmers.

The Witness: Farmers and cowboys, or boys dressed as cowboys, with cowboy clothes, their riggin' on, you might call it.

So I walked on up out in the crowd by a bale wagon, and Mr. Jack Ely walked up to me and he said, “I want to know about your damn Union.”

And I said—— [277]

Mr. Clark (Interrupting): Now, just a minute.

Mr. Examiner: I move that that go out as hearsay, there being no authority at all shown on the part of Mr. Jack Ely to speak for anything about the respondent.

Trial Examiner Lindsay: That may go until we know who Jack Ely is.

(Testimony of O. L. Farr.)

Mr. Clark: I understand the question called for what occurred and, therefore, I didn't make any objection at the outset of the witness' answer. Lay the foundation.

Trial Examiner Lindsay: Just a minute. Now as I understand it, he is telling exactly what occurred outside at this meeting.

Mr. Clark: I understand that. I simply want my objection in as to the conversation, Mr. Examiner. This is the first time we have come to a conversation.

The Witness: I said, "What do you want to know about the union?"

Trial Examiner Lindsay: Just a minute. Who is Jack Ely?

The Witness: An employee of the Boswell Company.

Trial Examiner Lindsay: How is that spelled?

Mr. Mouritsen: I believe it is spelled E-l-y, Mr. Examiner.

Mr. Clark: I think that is correct.

Q. By Mr. Mouritsen: Now, will you continue with what [278] you observed and did on that occasion.

Trial Examiner Lindsay: He may tell the whole conversation and everything that took place at that meeting.

Mr. Clark: So far as the conversation is concerned, with Mr. Ely, I will urge the same objection, may it please the Examiner, namely, it is hearsay

(Testimony of O. L. Farr.)

as to all these respondents and specifically as to the respondent Boswell Company there has been no authority shown from the company to Mr. Ely to speak for it with respect to any of the matters under investigation in this proceeding.

Trial Examiner Lindsay: Well, he may tell the conversation.

The Witness: Where was I?

Q. By Mr. Mouritsen: Mr. Farr, just to start, I believe you stated that Mr. Jack Ely said, walked up to you and said I want to know about your damn union."

Mr. Clark: Same objection, Mr. Examiner.

Trial Examiner Lindsay: Yes, you have an objection to that.

Mr. Clark: Counsel is repeating the question.

Trial Examiner Lindsay: He may answer.

The Witness: Well, he says,—I said, "Well, what about the union, Jac?"

He said, "The company doesn't want your union here," and he said, "I don't see why you fellows should turn agin' the [279] company you are working for."

I said, "Well, we don't—this is somebody else's meeting, this is not our meeting, and we don't discuss our union activities on the job."

So someone in the crowd said, "Who is the president of the union?"

I believe I said—myself—"Mr. Spear."

They said, "Mr. Spear is the man we want."

(Testimony of O. L. Farr.)

The crowd gathered around Mr. Spear. He tried to reason things with them——

Mr. Clark (Interrupting): I move that go out.

Mr. Mouritsen: Just state——

Trial Examiner Lindsay (Interrupting): —— what he said.

Mr. Mouritsen: State what he said.

Trial Examiner Lindsay: What he said there.

Q. By Mr. Mouritsen: Instead of saying, “He tried to reason,” tell what Mr. Spear said as you recall it. A. Mr. Spear said, “We——”

Mr. Clark (Interrupting): Just a minute. I don't want to interrupt too much, but I am going to object to whatever Spear said as not being in any way binding upon these respondents, and it is pure hearsay and self-serving.

Trial Examiner Lindsay: There is one point I want to ask: Was this meeting held on company property or was it just outside—— [280]

The Witness (Interrupting): Yes, sir.

Trial Examiner Lindsay (Continuing): ——the mill.

And that was during working hours?

The Witness: Yes, sir.

Trial Examiner Lindsay: You may proceed. You may have an exception.

Mr. Clark: Very well.

Q. By Mr. Mouritsen: Now, continue and tell us what Mr. Spear said at that time as nearly as you recall.

A. Mr. Spear said that we was only trying to

(Testimony of O. L. Farr.)

make the working conditions for everybody better; that the talk had been of some lay-off and that we wanted shorter hours for that reason, that everybody should work and get their share of the work.

The cry came out, "Let us throw them out. The company is behind us."

Q. Did you recognize—

Mr. Clark (Interrupting): Just a minute, Mr. Examiner. I move that that go out unless it is identified as having been stated by some person, and I have a chance to object to it or else until the witness states he is unable to identify where it came from.

Mr. Mouritsen: I will clear that up.

Trial Examiner Lindsay: Yes, either one or the other.

Q. By Mr. Mouritsen: Mr. Farr, you stated that the cry [281] came out from the union. Did you recognize the individual from the company—from the crowd—did you recognize anyone, any individual who made that cry? A. I did not.

Mr. Clark: I move to strike out the witness' statement concerning what was said in that regard upon the ground that it is hearsay, not binding upon these respondents, and no authority shown from the company to any such person to make any such statement.

Trial Examiner Lindsay: The answer may stand. Proceed.

You may have an exception.

(Testimony of O. L. Farr.)

The Witness: There was three men taken ahold of Mr. Spear—

Mr. Mouritsen (Interrupting): Do you know the individuals who did that?

The Witness: Yes, sir.

Q. By Mr. Mouritsen: Will you state who they were, please? A. Mr. Duncan—

Mr. Clark (Interrupting): May I have the spelling of the names, as near as you can give them?

The Witness: Duncan, Tisdale, and Sailsbury.

Q. By Mr. Mouritsen: Do you know the first name or the initials of any of those named?

A. John Duncan.

Q. How about Tisdale? [282]

A. Wallace Tisdale.

Q. And Sailsbury? A. Stan.

Q. And were all three of these individuals employees of the Boswell Company?

A. Yes, sir.

Q. Now, continue. What happened after these men took hold of Mr. Spear?

A. Mr. Spear asked them to take their hands off him and not bother him. They had torn his shirt considerable. One got by each arm, one on each side by the arm, and one by the back and pushed him to the superintendent's office of the Boswell Company. [283]

Q. And is the Superintendent office across the public highway from the plant itself?

A. Yes, sir.

Q. Did you follow these individuals as they

(Testimony of O. L. Farr.)

pushed Mr. Spear across into the Superintendent's office? A. I did.

Q. Were you present after that time in the Superintendent's office? A. Yes, sir.

Q. Did a number of other individuals accompany these three when they pushed Mr. Spear into the Superintendent's office? A. Yes, sir.

Q. Now, will you state what you saw and observed and heard in the Superintendent's office?

Mr. Clark: Well, may we have, Mr. Examiner, as nearly as this witness can give it to us, the identity of the persons present in the Superintendent's office on this occasion?

Trial Examiner Lindsay: If you can name anyone other than those three that went into the Superintendent's office.

Mr. Clark: If they went in.

Trial Examiner Lindsay: If they went in, yes.

The Witness: Those three went in. I know those fellows. There was a couple of fellows by the name of Winslow.

Mr. Clark: Winslow?

The Witness: Yes. [284]

Bill Robinson, Kelly Hammond.

Mr. Clark: Kelly Hammond?

The Witness: Kelly Hammond.

Burdine, Mr. Mitchell, the Robinson boys, Bill Robinson and Sam Robinson.

Mr. Clark: You have given us Bill Robinson. Now, Sam Robinson?

The Witness: Yes.

(Testimony of O. L. Farr.)

Q. By Mr. Mouritsen: Do you recall the names of any other people who were in the Superintendent's office at that time?

A. I don't believe so. There was a considerable crowd there. I could call those and know for sure, but there was quite a crowd there.

Q. And Mr. Spear was also there; is that correct?

A. Yes, Mr. Spear; and Mr. Martin, Mr. Andrade, Mr. Wingo. I don't recall anyone else, but there could have been.

Q. Will you state what occurred—strike that.

When you say the Superintendent's office, to what individual do you refer?

A. Mr. Gordon Hammond.

Q. Will you state what occurred in Mr. Gordon Hammond's office on that occasion?

A. Someone demanded Mr. Louie Robinson to pay us off, to give us our checks.

Q. Do you recall the individual who made that demand? [285]

A. I do not. The office was full and they were out in the hall.

Q. All right.

Now, just what further occurred?

A. Mr. Louie Robinson came to the door and said, "You men go back and start your machinery. I will be right out in a short while."

Q. What then occurred?

A. "—and straighten this out."

Q. What occurred—

(Testimony of O. L. Farr.)

Mr. Clark (Interrupting): May I ask if that is part of Mr. Robinson's statement? I think you interjected a question, Mr. Counsel.

Trial Examiner Lindsay: Maybe he did or maybe he didn't.

Mr. Clark: May we have the record read back?

Trial Examiner Lindsay: Yes.

Did Robinson say in his statement that he would come out and straighten the thing out?

The Witness: Yes.

Trial Examiner Lindsay: You are telling his conversation?

The Witness: Yes.

Mr. Clark: That clears it up

Q. By Mr. Mouritsen: Tell us next what occurred at that time?

A. The men just walked out around the office. Everybody [286] stopped. We were left out—the men that were operating the machinery, we all walked back and I started my machine; ginned cotton approximately four or five minutes.

Q. What happened?

A. Four men came into the front door of the gin.

Q. Who were they?

A. Mr. Kelly Hammond, Mr. Burdine, Mr. Mitchell and Joe Hammond.

Q. Yes.

Do you know what Mr. Mitchell's initials, or his name, is?

A. I don't believe I could recall.

(Testimony of O. L. Farr.)

Q. Was he an employee of the Boswell Company? A. Yes, sir.

Q. And were these other individuals employees of the Boswell Company? A. Yes, sir.

Mr. Clark: May I have them named again? I have three of them, Kelly Hammond, Mitchell and Burdine.

The Witness: Joe Hammond.

Trial Examiner Lindsay: Is this Joe Hammond the same Joe Hammond that is classified as a foreman?

The Witness: Yes.

Q. By Mr. Mouritsen: Very well.

Now, other than yourself and these four men, were any others [287] present?

A. Mr. Spear was starting his electric motor on his gin.

Q. Did he take part in any conversation that followed? A. Mr. Spear?

Q. Yes. A. Later he did.

Q. Yes.

And who is Mr. Spear?

A. A ginner that ginned on the opposite gin. There are two gins in one plant, and Mr. Spear ginned on the opposite gin.

Q. Is that Lonnie Spear? A. Yes.

Q. Will you state what was said by yourself and by these other men at that time?

Mr. Clark: Objected to on the ground it is hearsay, and not binding on any of these Respondents, and particularly as far as the Respondent, Boswell

(Testimony of O. L. Farr.)

Company is concerned, that no authority whatsoever has been shown from the Company to any of the individuals mentioned to make any statement at all for it or on its behalf with respect to the matters under investigation in this proceeding. [288]

Trial Examiner Lindsay: He may answer.

The Witness: Mr. Kelly Hammond shut my air blast fan off of the gin which carried the lint from the stand which chokes the stand when the air leaves. So I quit feeding the overflow up, which I was ginning, and raised the gin stand.

Mr. Bill Robinson came along and shut some more machinery off, and I stopped. I asked Mr. Robinson what to do about it. And he said, he says, "I have nothing to do about it."

At that time Tom Hammond walked in, and I said, "Tom, what do you want me to do? Do you want me to run this machinery under these conditions?"

And he didn't answer me. He turned around and walked out.

Q. By Mr. Mouritsen: What next occurred?

A. I went over to Bill Robinson—

Mr. Clark (Interrupting): I move to strike all of that conversation on the ground of the objection previously urged.

Trial Examiner Lindsay: It may stand.

The Witness: Mr. Bill Robinson and I— I walked over to Mr. Bill Robinson and talked to him about the running of the machinery. And he said —

(Testimony of O. L. Farr.)

Mr. Clark (Interrupting): The same objection, Mr. Examiner. [289]

Trial Examiner Lindsay: The same ruling. Proceed.

The Witness: He says, "There don't seem to be enough of you union men to run it." And he said, "I should say you should go home. That would be my advice."

Mr. Wingo spoke up and asked him, and he said, "As a foreman, will you tell us to go home?"

And he said, "No, not as a foreman, but that is my idea, that you men had better go home."

Mr. Clark: May I understand, Mr. Examiner, who it is that is carrying on this part of the conversation?

Trial Examiner Lindsay: I think he stated Bill Robinson; is that right?

The Witness: That is correct.

Trial Examiner Lindsay: Let us pay attention to the conversation.

Q. By Mr. Mouritsen: What then occurred?

A. The gang seemed to—

Q. (Interrupting): Don't give us your own conclusion. Tell us what you observed and what happened.

A. Excuse me.

I stood around a little while and nobody didn't say anything to me, only Bill Robinson and I. So I walked out to the front door of the plant. And an elderly gentleman by the name of Derichsweiler. I believe—I believe that is his name—and his son were standing there. [290]

(Testimony of O. L. Farr.)

And he says, "This is one of them, too, isn't it?" He said, "Let us throw him out."

Mr. Clark: The same objection, Mr. Examiner. There is no identity shown so far as Mr Derichsweiler and his son are concerned.

Q. By Mr. Mouritsen: Did you know who Mr. Derichsweiler and his son were? A. Yes, sir.

Q. Who were they?

A. Employees of the Boswell Company of the gin.

Q. Had you seen them working about the gin in the plant there? A. Yes, sir.

Mr. Clark: I move to strike out the portion of the conversation that has gone in already and object to any further statements by this witness concerning what either Derichsweiler said on the ground that it is hearsay as to all of these respondents and not binding upon any of them, and with respect to the Boswell Company upon the further ground that no authority has been shown from the company to the Derichsweilers or either of them to speak for the company in regard to any of the matters under investigation in this proceeding.

Trial Examiner Lindsay: All of this took place on company property during working hours?

The Witness: Yes, sir.

Trial Examiner Lindsay: As I understand it, Bill [291] Robinson is acting as a foreman there, is that right?

The Witness: Yes, sir.

Mr. Clark: I object to that, Mr. Examiner, on

(Testimony of O. L. Farr.)

the ground it calls for a conclusion of this witness with respect to what Bill Robinson's connection is with the company, and that is why I asked a while ago as to the person with whom this conversation was made, as I didn't understand that Mr. Robinson had been identified, as have the two Hammonds, as foremen.

Trial Examiner Lindsay: Mr. Robinson has been identified as a foreman. He may answer these questions, and the motion is denied.

The Witness: Mr. Derichsweiler says, "Let's throw him out. Mr. Gordon Hammond said you can have his job if we can get shut of them. You can have your job back ginning as you had while he was away."

Q. By Mr. Mouritsen: To whom did he say that?

A. He said that to me, or his son. I suppose it was his son he was talking to, but they were both there.

Mr. Clark: I suggest that is not responsive. I think the question was, "Who said that?"

Mr. Mouritsen: No, to whom——

Trial Examiner Lindsay (Interrupting): The question was to whom did he make the statement.

Mr. Clark: Very well. May I ask who said it? [292]

The Witness: Mr. Derichsweiler.

Q. By Mr. Mouritsen: Now, do you know the first names or initials of either Mr. Derichsweiler or his son? A. I do not recall it.

(Testimony of O. L. Farr.)

Q. May I ask you this: Does Mr. Derichsweiler have two sons working at the plant?

A. That is right; yes, sir.

Q. Do you know them by, either the elderly Derichsweiler or his sons, by any nicknames?

A. The older one, the old gentleman, the boys called him "Good Friday." That is the name he is known by in the plant.

Q. Do either of the sons have nicknames?

A. No, sir, not that I know of.

Q. And what next occurred at that time?

A. Mr. Wingo came and he and I walked away.

Q. When you say you walked away, you mean you left the plant at that time?

A. Yes, we left the plant at that time.

Q. At the time you left, was your machine still shut down? A. Yes, that is right.

Q. Do you recall approximately the time of day?

A. Well, it was approximately 11:00 o'clock.

Q. Now, directing your attention again to the crowd that you saw when you walked out of the gin for the first time, did you see any foreman of the plant present in that crowd? [293]

A. Yes, sir.

Q. Who did you see?

A. I saw Mr. Rube Lloyd.

Mr. Clark: I object to anyone being identified as a foreman who hasn't been already testified to by this witness on the ground that it calls for his conclusions.

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: You may name them and tell the facts surrounding them.

The Witness: Mr. Busby, Mr. Joe Hammond, Mr. Tom Hammond, Mr. Bill Robinson.

Q. By Mr. Mouritsen: Now, I believe you have already told us what Joe Hammond and Bill Robinson do.

What work had you observed Rube Lloyd doing at the plant?

A. He is the building superintendent at—he has charge of the carpenters and the building construction, setting pumps. I have worked under him. [294]

Q. At the time when you worked under him, did he also have a number of other men working for him? A. Yes, sir.

Q. Did you see him give orders to these other men regarding their work? A. Yes.

Q. Did he ever tell you when to come to work and when not to come to work? A. Yes, sir.

Q. Did you ever observe him tell other men when to come to work and when not to come to work? A. Yes, sir.

Q. You also mentioned Busby as being present at that time.

Have you observed the work that Mr. Busby does at the plant?

A. He had charge of the machine shop.

Q. Do you know Mr. Busby's first name or initials? A. I do not.

Q. What work have you seen Mr. Busby do at the plant?

A. I have seen him operate the lathes and tell

(Testimony of O. L. Farr.)

the men that work—give orders to the employees in the machine shop.

Q. Approximately how many employees are there in the machine shop?

A. From three to five.

Q. And have you observed Mr. Busby directing the work of these [295] other employees in the machine shop?

A. I didn't understand.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I have.

Q. By Mr. Mouritsen: Have you ever heard him give any orders to these other employees in the machine shop?

A. Yes, sir.

Q. Have you ever heard him tell those men when to come to work and when not to come to work?

A. No, I don't believe I did.

Q. Now, after you left the plant on November 17th, 1938, at approximately 11:00 o'clock, did you ever after that time call, or have a conversation with Mr. Louis T. Robinson?

Trial Examiner Lindsay: Just a moment, please. Is that November 17th or 18th?

Mr. Mouritsen: If I said November 17th, I meant November 18th.

Trial Examiner Lindsay: Change that in the question to November 18th.

The Witness: Yes, sir.

Q. By Mr. Mouritsen: Approximately how long after you left the plant?

(Testimony of O. L. Farr.)

A. Well, just as quick as I got home. [296]

Q. And what did you do at that time?

A. I called Mr. Louie Robinson over the telephone.

Q. Did someone answer on the other end of the telephone? A. Yes, sir.

Q. Did he identify himself as Mr. Robinson?

A. He did.

Q. Will you state the conversation that you had with Mr. Robinson at that time?

A. I told him what had happened when we went back to work, and did he want us to come back to work.

He said, "No, not now." He said, "I will check into this, and I will let you know."

And I said, "When?"

And he said, "Well,——" I said, "If you will let me know by 1:00 o'clock what you are going to do about it, I would be very glad."

He said, "Well, I will let you know in the near future."

So I insisted by 1:00 o'clock, and he said that he would try to do it.

Q. And did you hear from him by 1:00 o'clock?

A. I did not.

Q. Did you hear from him that day?

A. No.

Q. Have you heard from him about it since that time?

A. No, not to come back to work. [297]

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: Who is this man you are talking about?

The Witness: He is the general manager.

Trial Examiner Lindsay: Louie——

The Witness (Interrupting): Mr. Louie Robinson, general manager of the Boswell plant. That is my understanding.

Trial Examiner Lindsay: That is the man you had this telephone conversation with?

The Witness: Yes.

Q. By Mr. Mouritsen: Are you a member of any labor organization? A. Yes, sir.

Q. Of what organization?

A. I am a member of the A. F. of L.

Q. Do you recall the name?

A. The Cotton Products and Grain Mill Workers' Union, Local No. 21798, Corcoran, California.

Q. When did you become a member of that organization? A. September 2nd, 1938.

Q. During the months of September, October and November of 1938, were a number of meetings of that organization held in your house?

A. Yes, sir.

Q. Did you ever have any conversation with Mr. E. F. Prior along in March of 1938 relative to the formation of the Union [298] at the Boswell plant?

A. Mr. Prior came to my home——

Mr. Clark (Interrupting): May I just have the question answered yes or no?

Q. By Mr. Mouritsen: Answer that yes or no.

(Testimony of O. L. Farr.)

A. Yes, sir.

Q. And at that time, or subsequent to that time, did you and Mr. Prior make some arrangement for holding a meeting in Corcoran?

A. Prior to that time I think that I—I don't think so at that time.

Q. I mean, after that time? A. Yes, sir.

Q. And was such a meeting held after that time?

A. Yes, to my best knowledge it was. I wasn't there.

Q. Well, did you ever give to Mr. Prior a list of names of the employees of the J. G. Boswell Company? A. I did.

Q. Do you recall about when you gave him the list of names?

A. I do not recall the date.

Trial Examiner Lindsay: We will have a ten minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:) [299]

Trial Examiner Lindsay: The hearing is called to order.

Mr. Mouritsen: May I have a moment, Mr. Examiner?

(Conference between counsel.)

Q. By Mr. Mouritsen: Now, Mr. Farr, when you were last on the stand, I believe you testified about a list of employees of the J. G. Boswell Company that you furnished to Mr. Prior. Where did you obtain that list?

(Testimony of O. L. Farr.)

A. From Mr. Gilmore.

Q. Who is Mr. Gilmore?

A. He was an employee at Boswell Company previous to that time.

Q. Do you know whether or not at that time, when he gave you the list, he was an employee?

A. Yes. He was at the time he gave it to me.

Q. Do you know Mr. Gilmore's first name or initials? A. Jim Gilmore.

Q. Now, after you ceased to work for Boswell Company on November 18, 1938, have you had any employment since that time?

A. No, not any to speak of. I have worked a little at a few odd jobs.

Q. Do you know approximately how much you have earned since November 18, 1938?

A. Approximately \$15.

Q. If the National Labor Relations Board should order your [300] reinstatement with back pay, would you be willing to accept employment with the J. G. Boswell Company? A. Yes, sir.

Mr. Mouritsen: You may inquire.

Cross-Examination

By Mr. Clark:

Q. Mr. Farr, will you please tell us the duties of Bill Robinson which you saw him perform while you were working at the Boswell plant?

A. Well, he would tell me what to do.

Q. Well, in what department, please?

A. In the gins; in the gins.

(Testimony of O. L. Farr.)

Q. In the gins? A. Yes.

Q. Didn't Mr. Robinson or, rather, wasn't Mr. Robinson a mechanic who had charge of keeping the gins in condition?

A. Well, some of his work was that. That is right.

Q. Did you work under him as a mechanic?

A. No, I don't think so; no, sir.

Q. Did you ever hear Mr. Robinson give you any orders with respect to how to operate the gin?

A. Yes.

Q. Will you please give us the nature of those orders?

A. Well, I have had him bring cotton seed back and tell me that the ginning wasn't just right, to make a little change. Take the lint, you know, as we know it, cotton being tagged, [301] the gins, and would like for me to change the gins to that effect, if the gin was not right, happened to be some burrs in it, in the seed or something, the sample, he would come around to see about my condenser, possibly I better stop and see about it on account of the samples which was—they was very particular, you know, in making the samples for the cotton, give me orders that way in the way of doing a good job of ginning.

Q. Well, did Mr. Robinson ever give you any orders in connection with your duties as a ginner in the same manner as you have told us that Mr. Joe Hammond did?

(Testimony of O. L. Farr.)

A. Yes. He has told me when to quit.

Q. Bill Robinson?

A. Yes; what time to run and to quit.

Q. Was that true of Mr. Robinson during the entire time you were employed at the Boswell Company?

Mr. Mouritsen: Just a moment.

Trial Examiner Lindsay: Just a moment.

Mr. Mouritsen: That is Mr. Farr, is that it?

Q. By Mr. Clark: Is that true of Mr. Robinson during the entire time you were employed at the Boswell plant, namely, that he gave you orders on occasions as to when to quit and when to come to work?

Trial Examiner Lindsay: Oh.

The Witness: No, sir. [302]

Q. By Mr. Clark: Well, can you tell us during what period, if any, the condition which you have described was true? A. Well, in the gins.

Q. Well, was it true during all the time that you happened to be working in the gins?

A. The last two seasons.

Q. And by the last two seasons you mean the '37-'38 season and the '38-'39 season?

A. That is right.

Q. Is that true? A. That is true.

Q. How long have you been engaged in working in and around cotton gins, Mr. Farr?

Mr. Mouritsen: Objected to as immaterial.

Mr. Clark: It is preliminary.

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: He may answer.

The Witness: Better than 20 years.

Q. By Mr. Clark: I see.

And it is true, isn't it—withdraw that.

And you first came to work for the Boswell Company some time in 1936, I think you said.

A. Yes, sir.

Q. All right.

Now, it is true, isn't it, that in this particular locality, as you have observed the conduct of the Boswell opera- [303] tion during the time you have been employed there, that the ginning season starts along in September of each year?

A. Sure, that is when they start to gin the cotton.

Q. Right.

When we speak of the '37-'38 season, we mean, or rather, you mean, you understand, that it is the season commencing in September 1937 and ending some time in the middle of the year 1938, isn't that true? Isn't that the ordinary year?

A. The crushing of cotton seed ended in the middle of the year.

Q. Well, your ginning season is quite short, isn't it?

Mr. Mouritsen: Objected to as vague and indefinite.

Trial Examiner Lindsay: Let him tell how long it is.

Q. By Mr. Clark: Take the year '38-'39, which

(Testimony of O. L. Farr.)

is the ginning season which commenced last September, you say, will you please tell us how long that particular ginning season lasted so far as the Boswell plant was concerned?

A. The season of '38 and '9?

Q. '38 and '9.

A. I couldn't answer that question. I wasn't there after November 18th. [304]

Q. Well, did the gins operate continuously from September 1938 up until the time you left on November 18th?

A. I don't know. They started, I believe, the first of October this last season, right around the first of October, probably the 5th of October; most of them started then.

Q. Approximately in early October, you think they started, and then did they operate continuously up until the time you left? A. Yes.

Q. Was there no days during that period of time when the gins were not operating?

A. Not that I know of while I was there.

Q. I see.

Now, take the season before last season, that is the 1937-38 season, can you tell us how long that ginning season lasted at the Boswell plant, just approximately?

A. Oh, approximately until February.

Q. In other words, from September or early October of 1937 until February the following year; is that true? A. Approximately.

(Testimony of O. L. Farr.)

Q. Yes.

Now, did you notice any difference between the two seasons, so far as the volume of cotton in the Boswell plant?

A. I don't know as I paid any attention to it. I had all I could do both times. [305]

Q. Did you notice any difference in the number of men employed at the Boswell Company during the two seasons, that is, as between the '37-'38 season and the '38-'39 season?

A. No, sir, I didn't have any way of knowing the employment of both sides.

Q. I am just asking you for your observation as to the number of men around the plant.

Did it impress you that there were more men during one season than during the other?

A. There were men working last year that never had worked before.

Mr. Clark: I move that go out as not responsive. He may add that as an explanation, but I would like an answer to the question.

Trial Examiner Lindsay: Yes.

The Witness: I couldn't say.

Q. By Mr. Clark: In other words, so far as you are concerned, you cannot tell us?

A. I couldn't tell you.

Q. Whether or not you noticed that there were more men in one season than in the other, is that true?

A. I couldn't say, for I don't know.

Q. All right.

(Testimony of O. L. Farr.)

Now, how did you happen to get your job at Boswell's?

A. I was over at Bakersfield, and I had a brother-in-law that [306] was in the automobile business, and a ginner here at the Boswell Company owed him for an automobile. He called the ginner about this automobile and asked the ginner if they needed any more gimmers here, and Mr. Hammond was present. He talked to Mr. Hammond, and Mr. Hammond told him he could use a man if he was a ginner.

Q. All right. That is your brother-in-law, and not your brother, is that right?

A. Brother-in-law.

Q. Have you a brother in Bakersfield?

A. Not now.

Q. Is your brother-in-law still there?

A. No, sir.

Q. Well, is it your brother or your brother-in-law who was president of the Local Cotton Workers' Union in Bakersfield?

A. Something over a year ago, my brother was president of the Local there, something over a year ago.

Q. I see.

In other words, more than a year ago you had a brother in Bakersfield who was president of the Local Union of the Cotton Gin Workers affiliated with the A. F. of L. with headquarters in Bakersfield, is that true?

A. Yes, sir.

(Testimony of O. L. Farr.)

Q. Now, wasn't this brother the one who got you your job by telephoning Gordon Hammond? [307]

A. My brother-in-law.

Q. I see.

Your brother never contacted Gordon Hammond in that regard, is that right, so far as you know?

Mr. Mouritsen: I object to all of this as immaterial. It has no bearing upon the issues.

Mr. Clark: I think it has.

Trial Examiner Lindsay: You may answer.

Mr. Clark: I will re-frame the question.

Q. So far as you know, your brother, who was, you have said, head of one of the A. F. of L. Locals in Bakersfield, never contacted Gordon Hammond asking for a job for you?

A. No, sir, not that I know of.

Q. Not that you know of? A. No.

Q. What is your brother-in-law's name?

A. Barnett.

Q. Is he still in business in Bakersfield?

A. No, sir.

Q. Where is he, do you know?

A. No, I don't for sure know where he is; in the State of Washington.

Q. And how long ago did he move away?

A. Ten months; approximately ten months.

Q. Were you in Bakersfield when this job was arranged for you [308] between your brother-in-law and Gordon Hammond, or were you in Oklahoma?

(Testimony of O. L. Farr.)

A. I was in Bakersfield at the time he called Mr. Hammond.

Q. I see.

And had you worked in this State prior to that time? A. No, sir.

Q. In other words, you had just arrived here from Oklahoma, isn't that true?

A. Yes, some few days.

Q. Yes.

Did you belong to an A. F. of L. Union back there?

Mr. Mouritsen: Objected to as immaterial.

Mr. Clark: Very well.

Trial Examiner Lindsay: Sustained.

Mr. Clark: May I have Board's Exhibit 3?

(The document referred to was passed to Mr. Clark.)

Mr. Clark: Now it develops, Mr. Examiner, that Mr. Farr's page in Board's Exhibit 3 was in this book the other day——

Mr. Mouritsen (Interrupting): It is now——

Mr. Clark (Continuing): ——when all counsel looked at it, but it was mis-filed under the "G's", I think.

Will you please find it, Mr. Painter?

(Mr. Painter examines document.)

Mr. Clark: All right.

Will the Examiner indulge me just a minute?

(Testimony of O. L. Farr.)

I only find [309] the one sheet here, and there is a sheet No. 2.

Q. Well, Mr. Farr, will you please fix for us again, as nearly as you can, the time when you first started to work at the Boswell plant when you first came to work?

A. I will say the 5th of September; approximately the 5th of September, 1936.

Q. I see.

And you worked there continuously for how long?

A. Well, possibly had a little vacation, was sick a time or two, up until the 19th of July, '37.

Q. I see.

And then what happened, please?

A. I worked for the San Joaquin Cotton Company for approximately four months.

Q. With respect to your going to the San Joaquin—first, might I ask this—withdraw that.

Is the San Joaquin Cotton Company also called Anderson & Clayton? A. That is right.

Q. What work did you perform for them there?

A. I first went out and set up some new gins, a couple of new gins, I believe.

Q. And then what did you do?

A. I was day foreman for the San Joaquin Cotton Oil Mill in Bakersfield. [310]

Q. I see.

That was at a considerably higher salary than you had received, or a higher wage than you had received here at Boswell's, wasn't it? [311]

(Testimony of O. L. Farr.)

Mr. Mouritsen: This is objected to as immaterial, incompetent, irrelevant and immaterial.

Mr. Clark: I submit it.

Mr. Mouritsen: It doesn't tend to prove or disprove the issues.

Mr. Clark: He has said something, Mr. Examiner, about being dissatisfied with the conditions as one of his reasons——

Trial Examiner Lindsay (Interrupting): I do not think it is material, what he did over there, but he may answer.

The Witness: No, sir. It was practically the same.

Q. By Mr. Clark: Practically the same? You worked shorter hours, didn't you?

A. No, sir.

Q. What were your hours at Anderson and Clayton? A. I was paid by the month.

Q. Well, what were your hours?

A. Well, it was 12 hours; foreman, day foreman, at the oil mill, 12 hours.

Q. Day foreman at the oil mill and you worked 12 hours there? A. Yes.

Q. And you say your compensation was about the same? A. Approximately the same.

Q. After you worked there four months, then, you came back to Boswell, didn't you? [312]

A. Yes, sir.

Q. Why was that?

Mr. Mouritsen: Objected to as immaterial.

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: Oh, he may answer.

The Witness: Well, when I left Boswell, Mr. Hammond, for the Boswell Company, Mr. Hammond told me I could come back at any time I wanted to. I had a check left there. I came back after the check a month after I left and Mr. Hammond said, "When you want to come back home, you can come back home. There is a job waiting for you."

Q. By Mr. Clark: You are talking about Joe Hammond? A. Gordon Hammond.

Q. Mr. Gordon Hammond? A. Yes.

Q. Gordon Hammond was the one I meant.

A. That is right.

Q. Gordon Hammond was the superintendent for the employees, the man whom employees see to get jobs and who has control over them, isn't that right? So far as you have been able to observe?

Mr. Mouritsen: Objected to as being vague.

Mr. Clark: Withdraw it all.

Q. At any rate, it was Mr. Gordon Hammond who told you you could come back home when you wanted to, is that right? A. Yes.

Q. As a matter of fact, during the time you have been at the [313] Boswell plant, that has been the spirit among the employees, hasn't it, that the Boswell plant is home, and they are all one family?

Mr. Mouritsen: I object to that as incompetent, irrelevant and immaterial.

Mr. Clark: I submit it, Mr. Examiner.

Trial Examiner Lindsay: He may answer.

(Testimony of O. L. Farr.)

The Witness: It wasn't to me. I never had heard that until after, until later. I have heard it in the last six months, but up to then I don't believe I had ever heard it, up until then; I don't think I ever heard it mentioned, but later I have heard it.

Q. By Mr. Clark: Well, one month after July 1937 didn't Mr. Gordon Hammond tell you that when you wanted to come back home you could?

A. Yes.

Q. And then three months after that you did come back and asked for work at the Boswell Company, isn't that true? A. Yes, sir.

Q. Now, you have told us that you were dissatisfied with the 12-hour shifts which were worked by the employees of the Boswell Company during some of the time, at least, when you were employed there.

Mr. Farr, will you please state whether the number of hours worked were the result of any agreement among the em- [314] ployees?

Mr. Mouritsen: May I have that question?

Mr. Clark: I will reframe the question.

Q. Will you please tell us whether or not to your knowledge the employees at Boswell had anything to say about the number of hours they worked?

A. No, sir; I didn't have anything to say about it.

Q. Well, were you ever consulted by the company or other employees, as to whether or not you would rather work 12 hours a day than 8 hours?

A. No.

(Testimony of O. L. Farr.)

Mr. Mouritsen: I object to that. What if the other employees did ask Mr. Farr whether he would like it or not? That has no bearing upon the case.

Mr. Clark: Its purpose is to show, may it please the Examiner, that the matter of working 12 hours a day was the result of a request of the employees to be allowed to do that so as to make more money, and that the company was perfectly willing that they work 8 hours if they so desired.

Trial Examiner Lindsay: Now, Mr. Attorney, you are not testifying. You have a witness on the witness stand. You might ask him the questions.

Mr. Clark: I am stating my purpose for asking the question in answer to an objection.

Trial Examiner Lindsay: We don't know whether that is a [315] fact or not a fact. Examine the witness.

Mr. Clark: That is all I was seeking permission to do.

Trial Examiner Lindsay: I am allowing you to ask Mr. Farr.

Mr. Clark: Very well. I didn't understand that your Honor had ruled. I will reframe the question.

Q. Isn't it true, Mr. Farr, that the matter of working 12 hours a day was solely up to the employees at Boswell while you were there, so far as the company was concerned?

Mr. Mouritsen: May I have my objection that it is immaterial?

Trial Examiner Lindsay: Yes. He may answer.

(Testimony of O. L. Farr.)

The Witness: Well, I never heard them say anything against it or anything about it at all, the employer.

Q. By Mr. Clark: Didn't Mr. Gordon Hammond, when you discussed that matter with him, as I think you testified to in your direct examination, tell you that the matter of hours was the wish of the majority of the men?

A. Yes, sir. He said that he would try to get the hours down, that he would look into this matter.

Q. All right.

Now, let us go to that conversation——

Mr. Mouritsen (Interrupting): Just a minute. I hate to interrupt, but could we have that question and the answer? I don't think the witness understood it and I would like to [316] be sure that he does.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Now, just a moment. In the first place, your question is assuming facts that he did not testify to, and I wish you would reframe that question.

Mr. Clark: I have a right to do that, I think, Mr. Examiner, on cross examination. I will submit the objection to the question.

Mr. Mouritsen: Could we—may I ask if the witness understands the question.

Mr. Clark: I think the witness understands the question.

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: Let us not argue. He has a right to ask that.

The Witness: I didn't understand the question.

Q. By Mr. Clark: Very well. Will you please explain your answer, then.

A. Mr. Hammond said that if 12 hours a day was too much for a man to work, that he hadn't had any complaints about it, but that he had heard complaints over at the plant about it, and I told him that the employees in the plant at that time was all taking on about the 12 hours, 7 days a week, and the short change which we had. At weeks when we went from days—from nights to days—we worked 90 hours that week, and it [317] was a short change.

Q. All right.

Now, will you please name for us all the employees that you can call to mind at this time who have complained to you about that condition prior to the time you talked to Mr. Gordon Hammond.

A. Well, it would be hard; practically everybody was taking on about it.

Q. Let us have some specific names, as many as you remember.

A. Well, the boys that worked in the lint room.

Q. Let us have their names, please, Mr. Witness, if you can give them.

A. I couldn't call those Mexicans' names. I sure couldn't.

Q. Were they just Mexicans who so complained to you?

(Testimony of O. L. Farr.)

A. That was in the lint room—no, sir, there was considerable complaint among practically all of the employees about 12 hours 7 days a week.

Q. Well, just give us the names of any employees who made that complaint to you prior to the time that you talked to Mr. Hammond.

A. Mr. Dick White.

Q. Dick White.

A. A saw filer in the oil mill.

Q. Give us another.

A. Mr. Wingo, Mr. Spear—well, it would be hard for me to [318] recall the names.

Q. Is that all that you can at this time name who had made complaints to you concerning the hours prior to this conversation with Mr. Hammond? A. And be exact; and be exact.

Q. I see.

When did this conversation with Mr. Gordon Hammond take place?

A. Some time in the latter part of August.

Q. Of what year? A. '38.

Q. I see.

And was that the first time that you had ever said anything to Mr. Hammond concerning the fact that you were working 12 hours a day?

A. No. I had talked it before then, that it was too long to work.

Q. And to whom had you so talked it?

A. Mr. Gordon Hammond.

Q. And when?

(Testimony of O. L. Farr.)

A. At various occasions we would be talking about the conditions.

Q. Well, did you customarily discuss the conditions in the plant with Mr. Gordon Hammond? Did you from time to time discuss conditions in the plant so far as the employment was concerned with Mr. Gordon Hammond? [319]

A. Oh, we have talked about it occasionally.

Q. In other words, every time you wanted to discuss the terms of your employment with Mr. Hammond, he sat down and talked to you about it, didn't he?

A. I don't know as he sat down; I don't know.

Q. Well, standing up.

A. I don't recall. He talked to me about it, yes.

Q. And every time that you wanted to talk to him about it, he listened and he discussed those matters with you, isn't that true? A. Sure.

Q. On any of those occasions, did he tell you that if you were to continue at Boswell, you could not join a union?

A. No. He told me it was agin' the law for him to tell me that, to not join no union—I can't tell you to join a union—Mr. Hammond states, "I can't tell you not to join a union for it is agin' the law for me to tell you that."

Q. And he also said it was against the law for him to tell you to join a union, didn't he? Either way.

(Testimony of O. L. Farr.)

A. I don't remember about the other way, but I remember that way.

Q. Didn't he tell you that it was the policy of Boswell Company and for himself, Mr. Gordon Hammond, to say nothing to the men concerning whether they should join or not join a union? [320]

A. He told me it was agin' the law for him to tell me not to join the union.

Q. Didn't he tell you he had been instructed to that effect by the company, namely, to say nothing to the men one or the other about joining a union?

A. No, sir.

Q. Did he tell you how he learned it was against the law for him to tell you not to join a union?

A. No, sir.

Q. Did he say anything at all further in that regard? A. No, sir.

Q. And when did this take place, please?

A. At one time in the office.

Q. And can you fix the date?

A. The latter part of August.

Q. Well, is it the same conversation that we have been referring to and at which, I think you told us, that you, for the first time, mentioned to Mr. Hammond that the 12 hours was too long? Is that the same conversation?

A. The same conversation, yes.

Q. I see.

That was the first time you had told Mr.—with-
draw that.

(Testimony of O. L. Farr.)

Now, you had started some activity—withdraw that.

You had consulted with Mr. Prior about organizing an [321] American Federation of Labor Union in this plant among the employees as early as March of that year, hadn't you? A. Yes, sir.

Q. And from March until this date, August in 1938, no one representing the company had said anything at all to you, one way or the other, about your joining the union, isn't that right?

A. No, sir; it isn't.

Q. All right. Tell us what happened prior to August, the August meeting.

A. I had been asked several times by Joe and Tom Hammond if I were a member.

Q. All right.

Mr. Mouritsen: Let the witness finish his answer.

Mr. Clark: That may stand. Finish your answer.

The Witness: They had asked me at various times if I was a member of the union.

Q. By Mr. Clark: All right. Let me reframe my question.

From the time in March when you first consulted with Mr. Prior about organizing an American Federation of Labor union in this plant, up until the conversation you had in August of 1938 with Mr. Gordon Hammond, you had not discussed the matter of joining a union with either Mr. Gordon Ham-

(Testimony of O. L. Farr.)

mond or Mr. Louis T. Robinson, the plant manager, or any one from the Los Angeles office of Boswell Company, had you? [322]

A. (Pause)

Q. Now, Mr. Witness, please keep your eyes on the Examiner or on me, not on Mr. Prior or counsel. I realize you have talked this over with them, but just let us have your answers.

Trial Examiner Lindsay: Read the question, please.

(The record referred to was read by the reporter, as set forth above.)

The Witness: No, sir.

Q. (By Mr. Clark): And the August conversation you have told us about with Mr. Gordon Hammond was the first discussion concerning unionization which you had had with Mr. Gordon Hammond?

A. No, sir. If I understand that question right, no. The other question, we had not talked about the union, organization you said,—but we had talked about a union between the times.

Q. You mean with Mr. Gordon Hammond?

A. Yes, sir.

Q. Now, let us have the date of that conversation.

A. I can't place that date. I can recall it this way: There was a car in our place that belonged to the company and Mr. Hammond and some other

(Testimony of O. L. Farr.)

fellow came up for it and ran out of gas. I *taken* Mr. Hammond back down——

Q. (Interrupting): Just a minute, please. Let us fix the date as nearly as we can. [323]

What year was it?

Trial Examiner Lindsay: Finish your answer, first.

Mr. Clark: He was starting in with a conversation, Mr. Examiner. I would like to get it located as nearly as I can before we have the conversation.

The Witness: It was some time in July or August of '38.

Q. (By Mr. Clark): All right.

Some time in July or August of 1938, and this conversation you are about to testify to was with Mr. Gordon Hammond, is that right?

A. Yes, sir.

Q. Now, do you remember whether anyone else was present? A. *They* was not.

Q. And where was the conversation?

A. I believe it was in my car as we drove back to the Boswell plant from my home after some gasoline.

Q. Well, was it at the Boswell plant, then, whether it was in your car or not? Was it at the Boswell plant?

A. It could have been on the road or at the Boswell plant.

Q. I see.

And was Mr. Gordon Hammond riding in your car with you? A. Yes, sir.

(Testimony of O. L. Farr.)

Q. All right.

Now, tell us what was said about unionization? [324]

A. He spoke about some of the boys, the ginners working at 50 cents an hour in the seed house and he also asked me what the boys was getting in these plants where they were union and working hours of 8 hours and I told him that a man could do more work in 8 hours than he could in 12 and that they was paying better wages at the Bakersfield plant for 50 cents a load at the Bakersfield plant and was working 8 hours.

Also, I understood that all other plants was on 8 hours, practically all other plants in the Valley was on 8 hours.

Q. All right.

Now, what did he say to that?

A. Well, he didn't say. He didn't say that he would or wouldn't. I told him the work—that was a question he asked me and that is what I told him.

Q. Did he tell you why he was asking you that question? A. No, sir.

Q. Had you, prior to that time, told Mr. Gordon Hammond that you were attempting to organize the American Federation of Labor Union in the Boswell plant at Corcoran?

A. I hadn't told anybody and I hadn't been.

Q. Well, had you told Mr. Gordon Hammond that you had had conversations with Mr. Prior from Wilmington—

(Testimony of O. L. Farr.)

A. (Interrupting): No, sir.

Q. (Continuing): —In Los Angeles County? [325]

A. No, sir.

Q. Concerning the organization of the American Federation of Labor union?

A. He didn't ask me.

Q. I see.

So you don't know why it was that Mr. Hammond asked you about conditions which were then prevailing in July or August of 1938 in other cotton ginning establishments in which the employees had joined the union?

A. Yes. There was considerable union talk about the plant here among the employees.

Q. But you don't know why it was that Mr. Hammond asked you about it? A. No, sir.

Q. And was that the extent of that discussion?

A. Yes, sir.

Q. All right.

Q. During the August 1938 discussion, Mr. Farr, to which you have testified at some length, was there anything said by Mr. Gordon Hammond concerning your having approached two of the Mexican workers in the Boswell plant in the lint room, I believe, with applications to join this union, the names of which workers were Manuel Escabedo and his brother, whose name doesn't appear on this charter?

Mr. Mouritsen: I object to the question as com-

(Testimony of O. L. Farr.)

pound and [326] involved. I haven't been able to follow it myself due to the interruption. May I have it read?

Trial Examiner Lindsay: Yes, you may have it read.

Mr. Clark: Very well.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: And may I add to the question, "or Peter Galvan."

The Witness: Mr. Hammond said that he couldn't understand those Mexicans very well and it might be that he misunderstood it and that is what Mr. Hammond said to me.

Q. (By Mr. Clark): What was it that Mr. Hammond said to you, Mr. Farr, on that subject matter, if anything? Namely, with respect to you having asked these Mexicans to sign up with the union?

A. He asked me about carrying the book, the receipt book.

Q. I see.

A. Which I hadn't.

Q. And then what was it that Mr. Hammond said to you after you had told him that you hadn't carried a receipt book?

A. He says, "I might have not understood those Mexicans, or I can't understand this very well. I might have misunderstood those Mexicans, for I can't understand them very well."

Q. Well, did he tell you what the Mexicans,

(Testimony of O. L. Farr.)

what he understood the Mexicans to have told him in that regard? [327]

A. No, sir.

Q. Didn't he tell you that the Mexicans had come to him and said that you had represented to them, in asking them to sign up in this union, that if they would sign this paper they never could be laid off? A. No, sir.

Q. Mr. Hammond made no such statement as that, is that true? A. That is true.

Q. You have no recollection on that at all?

A. No recollection on that at all.

Q. Now, when was it in the fall of '38 that you took a trip back to Oklahoma?

A. Approximately the 26th of September, I believe, '38.

Q. And you were away for how long?

A. I think I returned on the 15th of October.

Q. And you then went back to work at what position? A. Ginner.

Q. And worked at that occupation, that position, until the morning of November 18, 1938, is that right? A. Yes, sir.

Q. Now, let us go for a moment to the morning of November 18th. As I understand it, Mr. Farr, you were working at your gin as usual until about 10:00 o'clock when the machinery shut down?

A. Yes. [328]

Q. In some of the gins? Is that right? Did somebody shut off all the machinery in the plant?

(Testimony of O. L. Farr.)

Mr. Mouritsen: Objected to as compound and unintelligible.

Mr. Clark: I will withdraw it.

Q. I will ask you what happened in that regard.

A. Well, I can only state in my own gin.

Q. I am only asking concerning your own gin. It was shut down? A. Yes.

Q. And by whom?

A. Bill Robinson and I.

Q. You both shut it down?

A. Yes, sir; at his request.

Q. I see. Bill Robinson asked you to shut it down saying that there was going to be a meeting of employees, is that true?

A. Didn't say anything about employees, I don't think. He said there was going to be a meeting to see about the union.

Q. I see. And so when he told you that and did his part toward shutting the gin down, you proceeded to shut off your part of the machinery, is that right?

A. He shut off the part of my—my part of it—I was operating the machinery. He shut off some of the motors, two or [329] three motors, probably three, and he helped me raise up the gin stand. [330]

Q. I see.

Is raising up the gin stand part of the operation of shutting the gin down? A. Yes, sir.

Q. And he helped you do that?

A. Yes, sir.

(Testimony of O. L. Farr.)

Q. You were in agreement, so far as shutting down the gin and going to the meeting, weren't you?

Mr. Mouritsen: Objected to as vague and indefinite, and unintelligible.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: I will sustain the objection.

Q. (By Mr. Clark): Did you make any objection to Mr. Robinson so far as shutting down your machine is concerned?

A. No, sir, I didn't. That was his orders, and he was the fellow that had told me to shut it down before on different occasions.

Q. You did what he said? A. Yes.

Q. And then you left your gin and went to where the crowd was, is that right?

A. Just outside of the gin door in the back, the side door.

Q. And after the discussion which you have described in your direct examination, these three employees whom you have named, took Mr. Spear by the arms and walked him over to the Superintendent's office, is that true? [331]

A. Three, one was behind at his back, one at each arm, and forced him out.

Q. Was any force used on you?

A. No, sir.

Q. Did you do any talking at the meeting?

A. Just—I answered the first questions.

Q. And what were they, please?

(Testimony of O. L. Farr.)

A. Jack Ely asked me the first question, I believe.

Q. And what was said?

A. He said, "We want to know about this damned Union."

Q. What did you say to that?

A. I asked him, "What about it?"

Q. What did he say to that?

A. He asked if—why did we want to turn against the Company that we were working for; that the Company didn't want any Union there, and he didn't see why we wanted to turn against the Company. And he asked who the president was.

Q. Didn't you tell him at that time that Mr. Gordon Hammond had told you that the employees had a right to do as they wanted, so far as joining a Union is concerned?

A. No, sir.

Q. You didn't make any reply to that effect?

A. No, sir.

Q. Prior to that time, had you told Mr. Ely that you had join- [332] ed a Union?

A. I don't remember whether I told him or not.

Q. As a matter of fact, Mr. Farr, as early as July you had furnished a list of employees, a list of names, to Mr. Prior for the purpose of sending invitations out to them to attend the Union meeting, hadn't you?

A. No, sir, I had given them to him by Mr. Gilmore's request. Mr. Gilmore got the names and handed them over to me, and I turned them over to Mr. Prior.

(Testimony of O. L. Farr.)

Q. A list of employees had been turned over to Mr. Prior, isn't that right? A. Yes, sir.

Q. And do you remember approximately when that was? A. I do not.

Q. All right.

After this list of employees' names had been turned over to Mr. Prior, a meeting was in fact called, of employees of the Boswell Company, for the purpose of inviting them to join the American Federation of Labor Union, isn't that true?

A. I heard of it. I wasn't there. I was working. I heard that they were. That is all that I can testify to.

Q. Whom did you hear that from?

A. I heard it from men—the employees.

Q. That they had attended the meeting; is that right?

A. That they was going to attend the meeting, I believe. [333]

Q. All right.

Do you remember about when that meeting was set for? A. I do not.

Q. Was it in the month of July, 1938?

A. I—it seems like it was. I wouldn't testify it was.

Q. As a matter of fact, you were discussing the organization of a Union in the Boswell plant with Mr. Prior and Mr. Martin straight along from the month of March, 1938, all through that year, weren't you?

(Testimony of O. L. Farr.)

A. Not in the Boswell plant.

Q. Well, where did you propose to organize it?

A. At meetings.

Q. Well, of whom did you propose to organize this Union? Of what people?

A. Of the employees.

Q. Of the Boswell plant; isn't that right?

A. Yes.

Q. Will you please answer so the reporter can get it? A. Yes, sir.

Trial Examiner Lindsay: Mr. Attorney, I think the point that you and he are at loggerheads on is that in your question you gave him, you indicated that he was talking about organizing among the employees, while at work in the plant.

Mr. Clark: I didn't mean that at all.

Trial Examiner Lindsay: That is what your question indi- [334] cated.

Mr. Clark: We will clear that up.

Q. As a matter of fact, as early as March, 1938, you were having meetings or conversations with Mr. Prior, Mr. Martin, sometimes at your home and sometimes elsewhere, regarding the organization of an American Federation of Labor Union to which you intended to attempt to have the Boswell employees join; isn't that true?

A. After the 2nd of September.

Q. Well, do I understand—

A. (Interrupting): 1938.

Q. (Continuing): —do I understand that you

(Testimony of O. L. Farr.)

had no such meetings with Mr. Prior or with Mr. Martin in an attempt to organize this Union prior to September 2nd?

A. Not to organize the Union. With Mr. Martin I never named it to him until September 2nd.

Q. Did you have any meetings with Mr. Prior before September 2nd of 1938?

A. He was at my place, I will say, a couple of times.

Q. And at the times when he called at your place, didn't you discuss the organization of this Union to which the employees of Boswell's would belong?

A. The first time he came he asked me the name of the Superintendent and the General Manager.

Q. And when was that, about? [335]

A. I would say March of '38.

Q. I see.

A. And he left and went to the plant and returned in about an hour.

Q. Now, on that occasion, didn't he tell you that he intended to organize an American Federation of Labor Union for the employees of the Boswell plant, isn't that right?

A. I don't believe at that time he did.

Q. Didn't you discuss anything at all about that?

A. Yes, we talked of it, the working conditions. He asked me and I told him the hours we worked and the hourly wage we drew an hour.

(Testimony of O. L. Farr.)

Q. And do you know how Mr. Prior happened to come to your house to find out the name of the Superintendent of the Boswell plant?

Mr. Mouritsen: That is objected to as immaterial.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: He may answer.

The Witness: He came with my brother.

Q. (By Mr. Clark): With your brother who was the head of a similar Local in Bakersfield, isn't that right? A. Yes, sir.

Q. All right.

Now, what other meetings did you have prior to September 2nd with Mr. Prior, concerning the organization of a Union to [336] which the Boswell employees were to belong?

A. It seems like he was back in the Summer, sometime.

Q. Didn't he come back for the purpose of holding this July meeting which we mentioned sometime ago, and to which you delivered the Gilmore list of names of employees?

A. That is right.

Q. Isn't that right?

A. Yes. He came back. That is the time he came back—April and September—he came back at that time.

Q. You didn't go to the meeting yourself, did you, because you were working?

A. Yes, sir, I was working.

(Testimony of O. L. Farr.)

Q. All right.

After the meeting, did you discuss it with Mr. Prior, that is, the success which had been made?

A. No, sir.

Q. The success of it?

A. No, sir, not until September.

Q. Well, did you have any further discussion with Mr. Prior at all about organizing an American Federation of Labor Union in the Boswell plant, or joining it yourself until September?

A. I don't recall of any time. I don't know whether the 2nd or not. It might have been possibly that.

Q. Do I understand that during that entire time, you had no such meetings with Mr. Prior at your house, that is, from [337] July clear on to until the 2nd of September?

A. I can't remember of it. I can't testify to that, for I don't remember of anything up until about that time.

Q. Did you discuss with any of the persons, if any, who attended the July meeting called by Mr. Prior, what happened at that meeting?

A. I don't believe I did.

Q. Did you hear anything at all about it?

A. Well, I heard some of the boys—the next morning; I heard Frank Gonder the next morning who relieved me on my job—he came back and said that he went to the meeting and he had just made a monkey out of the organizer.

(Testimony of O. L. Farr.)

Q. That he made a monkey out of Mr. Prior; is that right? A. Yes, sir.

Q. What did you say to that?

A. I said, "Did you?" or something that way.

Q. Well, from time to time, didn't you discuss with other employees at Boswell's the advisability of their joining this Union?

A. No, sir, not until September.

Q. And after September 2nd, you did then start to talk to them about it, didn't you?

A. At meetings.

Q. Well, what meetings?

A. Meetings that were called by the members. [338]

Q. Well, what meetings were there other than that of the morning of November 18th?

A. We had meetings at nights.

Q. Oh, you mean meetings of the members of your Union? A. Yes, sir.

Q. Of your Union? A. Yes, sir.

Mr. Clark: Does your Honor wish to take a recess at this time?

Mr. Mouritsen: Mr. Examiner, this witness is supposed to start work about 12:00 or 1:00 o'clock, as I understand it. Is that right?

The Witness: Yes.

Mr. Mouritsen: So if we could, I would like to finish with him.

Mr. Clark: I don't think I could possibly finish with him in that length of time. I am awfully

(Testimony of O. L. Farr.)

sorry, but there was no mention made of that when we started cross examination.

Mr. Mouritsen: Well, then, you will have to return, Mr. Farr, this afternoon.

Trial Examiner Lindsay: You may have all of the time necessary.

We will adjourn until 2:00 o'clock. When the various witnesses take the witness stand, after they have taken the witness stand I don't want them discussing this case with [339] others outside of counsel, until they are through with the examination. That will apply—that rule will apply all of the way through this hearing.

Mr. Clark: I understand, your Honor.

(Whereupon, at 12:00 o'clock M., a recess was taken until 2:00 o'clock P. M. of the same date.) [340]

After Recess

(Whereupon the hearing was resumed, pursuant to recess, at 2:00 o'clock p. m.)

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: Are you ready, Mr. Examiner?

Trial Examiner Lindsay: Yes.

O. L. FARR,

the witness on the stand *of* recess, having been previously duly sworn, resumed the stand and further testified as follows:

(Testimony of O. L. Farr.)

Cross Examination

(Continued)

Q. (By Mr. Clark): Now, Mr. Farr, I believe you stated this morning that prior to September 2nd of 1938 you hadn't solicited any applications for membership in the union among employees of the Boswell Company? A. I hadn't.

Q. I see.

And was it on September 2nd that you joined the union yourself?

A. The best I remember the 2nd.

Q. Am I correct in stating that after September 2nd, then, you did approach certain employees of the Boswell Company with invitations to join your union?

A. I invited them to our meetings.

Q. I see. [341]

And I believe you told us this morning that those meetings, that is, your union meetings, were held from time to time at places off the company's property, is that right?

A. Off of the company's property.

Q. That is right. At night, at the homes of yourself and other persons, isn't that true?

A. Yes, sir.

Q. All right.

Now, did employees of the company come to any of those meetings? A. Yes, sir.

Q. And as a result—withdraw that.

Did you attend any meetings on the property of

(Testimony of O. L. Farr.)

the company with Mr. Hammond, Mr. Gordon Hammond we will say, representing your union after September 2nd and before November 18th?

Mr. Mouritsen: Objected to as vague and indefinite.

Mr. Clark: I will withdraw it because I can ask the question directly.

Q. You attended a meeting on the morning of November 17, 1938, Mr. Farr, in the office of Mr. Gordon Hammond at which were present Mr. Prior, yourself, and Mr. Martin and Mr. Gordon Hammond, isn't that so?

A. In the office; not in Mr. Hammond's office, but in the Boswell office. [342]

Q. All right. Whose office was it, if not Mr. Hammond's?

A. I do not know, but I know it wasn't Mr. Hammond's office. I know his office.

Q. In other words, it was in the administration building, is that right?

A. In the office.

Q. In the office building? A. Yes.

Q. Will you please tell us what time of day that meeting was held?

A. In the forenoon. I can't recall the time.

Q. Well, it was after the plant had commenced operations for the day, wasn't it?

A. Yes. Mr. Hammond came out and got me on the job.

Q. Yes.

(Testimony of O. L. Farr.)

In other words, Mr. Prior had—withdraw that.
Someone—withdraw that.

Mr. Gordon Hammond came to where you were working some time during the forenoon of November 17 and asked you to come to a meeting which he was going to have with certain representatives of your union, isn't that right?

A. He didn't put it just exactly that way.

Q. Well, please tell us how he did put it. I wasn't there and I want your description of it.

A. He said—he come out—“Can you get away a little [343] while?”

I said, “Yes, if you send a ginner out here.”

“The man is back here again, wants you boys to meet us out in the office,” is the way Mr. Hammond stated it.

Q. And to whom did he refer when he said, “the man”?

A. Mr. Prior was the man that *were* there.

Q. I see.

Now, did Mr. Gordon Hammond likewise ask any other employee of Boswell, who is a member of your union, to attend that meeting?

A. They attended it. I suppose he asked them.

Q. All right.

Who else was there outside of yourself and Mr. Prior and Mr. Gordon Hammond? [344]

A. Mr. R. K. Martin and Mr. Lonnie Spear.

Q. And both of those gentlemen were at that time members of this Local Union, weren't they?

(Testimony of O. L. Farr.)

A. Yes, sir.

Q. All right.

Mr. Spear was the president, I believe?

A. Yes, sir.

Q. And what position, if any, did you hold with the Union? A. Vice-president.

Q. All right.

Now, was there anyone else present at this meeting, then, on the morning of November 17th outside of Martin, yourself, Mr. Prior and Mr. Gordon Hammond?

A. No, not that I recall. That was all.

Mr. Mouritsen: Did counsel name Mr. Spear in that?

Mr. Clark: I didn't. Mr. Spear.

Q. We have mentioned everyone who was there, isn't that right, within the last few minutes of your testimony? A. Yes, yes.

Q. All right.

Now, at that meeting, Mr. Farr, didn't Mr. Hammond, Mr. Gordon Hammond, state to the persons present whom you have just named that no one would be laid off from his work or discriminated against because he belonged to your Union?

A. I don't remember it just that way. [345]

Q. Well, how do you remember it, please?

A. (Pause.)

Q. I would like your version of that.

A. There wasn't anything said about the Union. We asked—someone asked him about it—was talking about the payroll being high.

(Testimony of O. L. Farr.)

Q. Talking about what? I didn't get it.

A. The payroll being high. He was using lots of help.

Q. The payroll being high? A. Yes.

Q. I see.

A. And that—and I believe that I says, “Well, what about going down to eight hours and letting everybody work?”

And he said, “Well,”—that he would take that up and let us know later.

Q. Let me interrupt you there, if I may, Mr. Farr, to ask you this: What do you understand the purpose or object of this meeting to be?

A. Well, to see why the members of our Union had been laid off on the previous day, the 15th.

Q. All right.

In other words, I am correct in stating, am I not, that the persons present at this meeting other than Mr. Gordon Hammond, were all representatives of your Union; that is, the Local Union, with the exception of Mr. Prior who is the secretary of [346] the Council which was instrumental in organizing your Local Union; isn't that right?

A. (Witness nods his head in the affirmative.)

Mr. Mouritsen: Let the record show the witness nodded his head.

Q. (By Mr. Clark): The answer is Yes?

A. Yes.

Mr. Mouritsen: May the witness be instructed to answer up audibly?

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: Yes. Answer the questions audibly.

Q. (By Mr. Clark): You understood the meeting to be one between Mr. Gordon Hammond as the representative of the Boswell Company, and representatives of your Union, isn't that right?

A. Yes, sir.

Q. For the purpose of discussing such matters as might be of interest to you on that occasion, isn't that right? A. Yes, sir.

Q. Now, as a matter of fact, none of your men had been laid off prior to this meeting, had they?

A. Yes, sir.

Q. Who were they, please?

A. Boyd Ely.

Q. And when was he laid off, if you know?

A. The Fifteenth. [347]

Q. That would be two days before?

A. And Walter Winslow.

Q. That is two.

When was he laid off?

A. The fifteenth, if I recall, approximately the fifteenth. [348]

Q. And who else, please?

A. That is all I recall.

Q. All right.

Am I correct in stating that Mr. Gordon Hammond said on that occasion that gin No. 4 was about to be shut down because of the lack of any further need for it and that it might be that some

(Testimony of O. L. Farr.)

of your people were employed on that gin in which connection he told you that he didn't know who belonged to your union?

Mr. Mouritsen: I will object to the question on the ground it is vague and indefinite. It is compound. It doesn't permit an intelligible answer.

Mr. Clark: I think it does, but it is complex, Mr. Examiner, and I will withdraw it.

Trial Examiner Lindsay: Yes. Try to make the questions a little shorter.

Q. (By Mr. Clark): Did Mr. Hammond say anything about intending to shut down gin No. 4 within the next few days?

A. I don't know as he named gin No. 4, but he talked of there being a gin shut down in the near future.

Q. All right.

In other words, didn't he tell you there wasn't any further need to keep at least more than one of the gins in operation and that it would probably be shut down in the near future? Isn't that right? [349]

A. I don't know as he said either that or not having as long hours ginning. We had been ginning 16 hours and we got down to 12. He thought possibly that the hours would come down, and there wouldn't be enough cotton, and we wouldn't run the gin if the cotton wasn't there.

Q. What did he say concerning the possible shutting down of any gin?

(Testimony of O. L. Farr.)

A. I don't remember what he said, but he talked of shutting down the gin or cutting down on the hours.

Q. Now, during that conversation did Mr. Hammond likewise state to you gentlemen, that is, Mr. Prior, yourself, Martin, and Spear, that he didn't know who your members were?

A. As I recall, he possibly—he asked us, I believe, at that time, who they were.

Q. And in response to his question, that is, Mr. Gordon Hammond's question in that regard, didn't your Mr. Spear say that he would furnish Mr. Hammond with a list of members?

A. I don't remember that.

Q. Do you remember any talk at all about a list of members being furnished to Mr. Gordon Hammond so he would know who the members of your union were?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial, compound, doesn't—

Mr. Clark (Interrupting): I will submit that.

Trial Examiner Lindsay: You may answer, if you under- [350] stand it.

Mr. Mouritsen: Mr. Examiner, here is the situation: It is a double question.

Mr. Clark: I withdraw the question.

Q. Was there anything at all said that you remember now about any list of your members being furnished to Mr. Hammond?

A. I don't recall myself—or anyone else—I don't

(Testimony of O. L. Farr.)

recall myself of that, but there was quite a bit said there that I may not recall. I recall what I said, but recalling what someone else said, I can't do it.

Q. Do you remember Mr. Hammond stating to you on that occasion that it had already been necessary to lay off some men because of lack of work and that maybe some of your members were among those laid off?

A. Well, I don't know. I don't remember that statement.

Q. Would you say that statement was not made by Mr. Hammond at that time?

A. I wouldn't say it was not made, but I can't recall it at this time.

Q. Do you remember Mr. Prior saying to Mr. Hammond that it was against union rules to furnish a company with a list of its employees who belonged to the union and, therefore, that would not be done in this case?

A. I can't recall that.

Q. Would you say that statement was not made by Mr. Prior [351] during this conversation?

A. I would say that I didn't hear it if it was made. I can't testify that I heard that question.

Q. Well, do I understand then, Mr. Farr, that you have no recollection at all concerning any conversation regarding the company, that is, the Boswell Company, through Mr. Gordon Hammond, being informed of who your members were?

A. No, Mr. Hammond has never asked me per-

(Testimony of O. L. Farr.)

sonally or in any other way who the members were. He never did ask me.

Q. No. I am asking you whether he asked the group representing your union collected at this meeting who the members were, or whether any of the statements that I have called your attention to were made.

Mr. Mouritsen: I object to that last, Mr. Examiner. Obviously counsel has made any number of statements, and how the witness is to single out— [352]

Mr. Clark (Interrupting): I will reframe the question.

Q. Do you remember anything being said at the conversation that we are now discussing, by Mr. Gordon Hammond, by way of a request for information concerning who your members were?

A. I do not.

Q. Nothing at all, is that correct?

A. That is true.

Q. You don't remember Mr. Prior making any response to any such request, or Mr. Spear making response to any such request, is that right?

A. I don't recall it.

Q. All right.

Do you remember, though, Mr. Farr, at this conversation in the morning of November 17th that Mr. Hammond told you that in order to keep the gins going for a few more days, or in order to stretch out the work, he would, on the next day, start two

(Testimony of O. L. Farr.)

of the gins at 6:00 o'clock in the morning, the usual starting time, and shut them down at 3:00 in the afternoon and start the other two at 10:00 o'clock in the morning and shut them down at a later hour in the afternoon? A. He did not.

Mr. Mouritsen: Mr. Examiner, I move that the answer be stricken until I have an opportunity to have the question read.

Mr. Clark: Let us have it read. The answer may go out. [353]

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: May I ask that you make your questions single and shorter?

Mr. Clark: I am doing the best I can, Mr. Examiner.

Trial Examiner Lindsay: Take one at a time, one section of it at a time.

Mr. Clark: I am doing the best I can. I will endeavor to simplify it as much as I can.

Mr. Mouritsen: I object to the question, Mr. Examiner, as it is too compound. It isn't a fair question to present to a witness. It is too involved. I can't follow it myself, and I am sure that the witness would have difficulty also. It *it* is too much of a strain for him to answer four or five questions all in one.

Mr. Clark: I don't think this witness is under any strain, Mr. Examiner. I submit the objection.

Trial Examiner Lindsay: Wait a minute. We

(Testimony of O. L. Farr.)

are not to have any of this talking back and forth. I kindly requested that you make your questions shorter and have them single questions rather than double questions. I think that is a fair request.

Mr. Clark: Mr. Examiner, I am simply asking for a statement made by Mr. Gordon Hammond, and that is a single question.

Trial Examiner Lindsay: You can cut that down into two [354] sections very easily, one at a time. If you don't want to do that he may answer.

Mr. Clark: I will reframe the question, Mr. Examiner.

Q. At this meeting on the morning of November 17th, was there anything said by Mr. Gordon Hammond concerning the manner in which the gins would be operated on the following day?

A. No, sir.

Q. You are sure of that?

A. I will tell you what he said.

Q. Perhaps you didn't get the question in mind. I will ask that it be re-read to the witness.

Trial Examiner Lindsay: Read the question.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark): Now, have you the first question in mind there? Let us hear what he said.

A. He said that he would check into it and let us know later.

Q. Didn't he at that time tell you that he would start only two of the gins at 6:00 o'clock?

(Testimony of O. L. Farr.)

A. No, sir.

Q. The following day? A. No, sir.

Q. Didn't he at that time tell you that he would start the remaining two of the gins at 10:00 o'clock?

A. No, sir. [355]

Q. On the following day?

A. No, sir. [356]

Q. And didn't he, with respect to those statements made to you and Mr. Prior and Mr. Farr and Mr. Martin, on that occasion state that he would do those things so as to attempt to stretch the work out for a few more days?

Mr. Mouritsen: Mr. Examiner, I object to this question on the ground it is vague and indefinite. If counsel will talk with respect to a certain statement or statements made to this committee—
(Pause).

Mr. Clark: I will withdraw that question.

Q. On the occasion under discussion, namely, November 17, didn't Mr. Gordon Hammond say to you and the other gentlemen representing your union, that he would do his best to stretch the work out for a few more days?

A. He said he would let us know in the near future.

Mr. Clark: Now, may I ask that that answer go out, Mr. Examiner, and that the question be re-read to the witness so he can get it in mind and answer it?

Trial Examiner Lindsay: I think the question

(Testimony of O. L. Farr.)

has been answered now two or three times and the witness, I believe, has tried to give you the answer as to what was said.

Proceed.

Mr. Clark: All right.

Q. You didn't then, after the meeting of November 17th, state to any of the other employees at Boswell, that your union had succeeded in cutting the hours down and that they [357] had better join up? A. No, sir.

Q. And you didn't make any such statement as to that to Mr. Bill Robinson, I take it?

A. No, sir.

Q. Now, let us go back to the meeting of November 18, or the episode, we will call it, of November 18th, where we left you this morning.

Now, as I understand it, Mr. Farr, after you had left the gin where you were working on the morning of November 18th and after the gin had been shut down, you found yourself, or, rather, you went to a gathering of 60 employees of the company, is that right?

A. Well, I don't say—

Q. (Interrupting): Well, 60 or 70 or 80?

A. I will say 60 or 70 men.

Q. Yes, that is what I mean.

And I believe I asked you this morning whether you took any part in the conversation which occurred at that time in the presence of all of these people.

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: Yes.

(The pending question was read by the reporter, as follows: [360])

“Q. I think I got as far this morning, Mr. Farr, as having you tell us that Robinson asked you, or rather, stated to you that now they were going to find out about your damn union. Is that the statement that was made?”)

Trial Examiner Lindsay: Now that question is a misstatement of fact. The witness testified that Jack Ely is the one that made that statement to him. Now let us try and follow his testimony.

Mr. Clark: Very well. All right. Now I think I can start from there.

Trial Examiner Lindsay: I don't want facts misquoted. [361]

Mr. Clark: I am certainly not mis-quoting the record deliberately. That is why I asked the question to try to get the facts out of the witness.

Trial Examiner Lindsay: Quit arguing about it. I am just merely telling you what I want, and proceed under those orders.

Q. (By Mr. Clark): It was Ely that made that statement then, was it? A. Yes, sir.

Q. Now, at that time, Mr. Farr, in this gathering of some sixty men, was anything said to you by Mr. Ely or any other participant in the conversations which occurred there concerning the fact that two of the gins had not commenced operations that morning at 6:00 o'clock?

(Testimony of O. L. Farr.)

A. No, sir. There wasn't nothing said by Mr. Ely to me.

Q. Was there anything said by anyone else at that general meeting, to you or in your hearing, on that subject?

A. I couldn't say what was said. I didn't hear it myself; didn't hear anything of that kind.

Q. Was there anything said by anyone during the conversations which took place on this occasion concerning the meeting of the morning before, namely, November 17th, between you and Mr. Prior and Mr. Spear and Mr. Martin and Mr. Gordon Hammond?

A. No, sir, not that I heard.

Q. Absolutely nothing? [362]

A. Nothing said to me.

Q. Anything said that you heard?

A. I never heard anything.

Q. All right.

I take it that nothing was said in your hearing concerning the fact that such a meeting had taken place, isn't that right? A. Yes, sir.

Q. Now, was anything said during this general meeting on the morning of November 18th concerning the fact that your union or its representatives had prevailed upon Boswell Company to shorten the hours and divide the work up among more men?

A. I don't recall that. I don't remember that.

Q. Will you please tell us then what, if anything,

(Testimony of O. L. Farr.)

further than you have testified to was said to you on that occasion, and what response, if any, you made?

Trial Examiner Lindsay: Is this on the 18th?

Mr. Clark: Yes, anything further than what he has testified to.

The Witness: I testified to that. The record will show I testified to that, up until the time I got home, before noon.

Q. By Mr. Clark: Please tell us whether anything else occurred at that meeting other than you have told us on your cross examination this morning? A. Not that I——

Q. (Interrupting): Which is the conversation between you and [363] Mr. Ely about the Union?

A. No, sir.

Q. That is all that happened?

A. Yes, sir.

Q. Now, while you were standing there, though, Mr. Spear tried to make a speech, did he, to the assembled employees and other people?

A. Yes, sir.

Q. And what did Mr. Spear say?

A. I couldn't state what he said. There was too much noise and racket and confusion.

Q. What was the burden of what he tried to say?

Mr. Mouritsen: Do you understand the question?

A. By Mr. Clark: What was the gist of what he tried to say?

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: I think the witness has said he couldn't answer.

Mr. Clark: He said he couldn't answer what was said, but he may know what the general effect of it was.

The Witness: I can't repeat that.

Mr. Clark: All right.

Q. Now, as a result of all this, then, all of you went over to Mr. Gordon Hammond's office, as you described this morning, isn't that right?

Mr. Mouritsen: I object to that "all of you," as it is [364] too vague and indefinite. I believe counsel——

Mr. Clark (Interrupting): I am not going to go back through and ask him who went over, but in any event, Mr. Spear, as you testified this morning, was taken over there by certain employees of the Boswell Company, and you and some other gentleman followed them, isn't that right?

The Witness: That is right.

Q. By Mr. Clark: All right.

Now, no force was used, so far as you were concerned, to take you over to the superintendent's office, was there?

A. There was one fellow in the crowd who spoke up and said that he was going to take me, and I told him to keep his hands off me, that I would go; for him to keep his hands off me.

Q. Who was that fellow? A. Winslow.

Q. Which Winslow? What is his first name?

(Testimony of O. L. Farr.)

A. I don't know. It was a Winslow that works in the feed lot, or something.

Q. He worked in the feed lot?

A. Yes, over around the feed department somewhere.

Q. I see.

What did Winslow say to you in this connection?

A. He said, "Get on out of here, get to going. I am going to put you out."

He started over and—him and another fellow, too—I [365] asked them to keep their hands off me.

Q. And then they kept them off? Did they?

A. They did.

Q. All right.

Now, what other members of your Union went over with you?

A. I testified to that in the record once.

Trial Examiner Lindsay: You may answer again.

Q. By Mr. Clark: Let us have them, please?

A. Mr. Spear was in the office.

Q. Yes. A. Mr. Martin.

Q. Yes.

A. Mr. Wingo, Mr. George Andrade and myself, and I don't recall anyone else.

Q. All right.

How about Mr. Briley; did he go along?

A. I don't remember.

Q. Joe Briley?

A. He went out. I don't know whether he went along to the office; I don't remember.

(Testimony of O. L. Farr.)

Q. By the way, is he still a member in good standing of your Union?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: Sustained. [366]

Mr. Clark: May I state, if it please your Honor, I will submit that the record will show that Mr. Briley is still employed by this Company before we get through. I can't prove it all at once. I promise to connect it up.

Mr. Mouritsen: It is not within the issues of this case whether any of the members are in good standing or not.

Mr. Clark: Well——

Trial Examiner Lindsay (Interrupting): Sustained.

Mr. Clark: All right.

Q. Is Mr. Briley a member of your organization?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I will submit that.

Trial Examiner Lindsay: Sustained.

Q. By Mr. Clark: Did either of these Mexican employees go along with you over to the superintendent's office?

Mr. Mouritsen: Objected to as vague and indefinite.

Q. By Mr. Clark: Either Mr. Escabedo, Manuel Escabedo, or Peter Galvin?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: He may answer.

The Witness: To my recollection, they weren't employed that day.

Mr. Clark: I see. [367]

Q. Was Martin employed at that day?

A. Yes, sir.

Q. And how about Wingo? Was he employed there at that time? A. Yes, sir.

Q. All right.

Now, I suppose that when you arrived at the superintendent's office, everybody was talking at once; isn't that true?

A. Well, not so bad, no.

Q. Not so bad?

A. When we got to the office, there wasn't much said.

Q. Who did you see at the office, Mr. Gordon Hammond? A. No, sir.

Q. Mr. Louie Robinson? A. Yes, sir.

Q. He is the general manager of the plant, isn't he? A. Yes, sir.

Q. And when you got over there, when you arrived at Mr. Robinson's office, did anyone demand of him that you Union men be discharged?

A. Yes, sir, I heard that demand. [368]

Q. I see.

And what, if anything, did you or any representative of your union say in response to that?

A. We didn't say anything.

Q. Was Mr. Gordon Hammond there at that time? A. No, sir.

(Testimony of O. L. Farr.)

Q. And then Mr. Robinson said to you, to everyone there, "Now go back to your posts. You are all excited. Go back to your work and I will straighten this out later."

Isn't that right?

A. That is not exactly the way he said it.

Q. Let us have it exactly as he said it as near as you remember it.

A. As near as I remember it, he said, "Go back and start the machinery. I will be out right away."

Q. He didn't say then that you were all excited and to go back to work and cool down and that he would straighten it out later?

Mr. Mouritsen: Objected to as already asked and answered.

Mr. Clark: I have that right, may it please the Examiner, and I will submit it.

Trial Examiner Lindsay: Sustained.

Q. By Mr. Clark: Did he say anything else that you can remember at this time? [369]

A. No, sir.

Q. As a result of that you then went back to your stations? A. Yes, sir.

Q. And within a few minutes I believe you told us that some employees appeared as a result of which you and some others left the company property and went home, is that right?

A. Yes, sir.

Q. Now, who all, to your knowledge, left the company property at that time?

A. Mr. Wingo and I went out together.

(Testimony of O. L. Farr.)

Q. Well, how about Martin? Did he leave?

A. I don't know when he left, but he was up at my—stopped at my house shortly after I got there.

Q. Now, who else, if anyone?

A. Well, Mr. Spear.

Q. There is more. Who else, please?

A. Oh, a half an hour later Mr. Powell came. Mr. Powell came in.

Q. Is Mr. Powell a member of your union?

A. Yes, sir.

Q. Who else, please? A. Mr. Andrade.

Q. And is Mr. Andrade a member?

A. Yes, sir.

Q. And who else, please? [370]

A. Mr. Briley, Joe Briley.

Q. Joe Briley? A. Yes, sir.

Q. And is he a member?

A. Yes, sir. At that time he was a member of our union.

Q. Isn't he a member now?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: Sustained.

Q. By Mr. Clark: Who else, please?

A. That is all I recall.

Q. Now, did you on this second occasion of employees of the Boswell Company approaching you concerning your belonging to a union go back to Mr. Robinson and tell him about that?

Mr. Mouritsen: Objected to as vague and indefinite.

(Testimony of O. L. Farr.)

Mr. Clark: Withdraw it.

Q. Before you left the plant to come home on the morning of November 18th, did you go back and tell Mr. Robinson that these other employees had persisted in molesting you?

A. No, sir; I called him over the telephone.

Q. I mean, before you left the plant?

A. No, sir.

Q. To your knowledge had any of the people that you have just named gone back to Mr. Robinson and told him that the employees were not letting you union men alone? [371]

Mr. Mouritsen: Objected to as calling for hearsay testimony on behalf of the witness.

Trial Examiner Lindsay: He may answer.

The Witness: Not that I recall.

Q. (By Mr. Clark): In other words, when you went back to your job and started your machine up and these employees approached you the second time, you simply went on home, is that right?

A. When the foreman of the company came out and they shut the machine down, I thought it was time to leave.

Q. You are talking about Bill Robinson?

A. And Tommy and Joe Hammond.

Q. Did you attend a meeting at Mr. Robinson's office the following morning, namely, November 19th?

A. I did not.

Q. You knew that meeting was going to take place, though, didn't you?

A. I don't recall that I knew that that meeting was going to take place. I don't recall.

(Testimony of O. L. Farr.)

Q. Did Mr. Prior or anyone who was present at that meeting report what happened to you after this had taken place?

A. I knew that they were down there,—later, but I don't know that they reported. I don't recall what they reported.

Q. Did you ever find out what happened at the meeting that was held between Mr. Prior and Mr. Robinson on the morning of [372] the 19th, which is the morning following the things you have testified to? A. Yes, sir.

Q. All right.

Who else from your union was present at that meeting, if you know? A. I don't recall.

Q. Well, isn't it a fact that certain representatives of your local, together with Mr. Prior, went down and called upon Mr. Robinson on the following morning, that is, November 19th, concerning the matters which had happened the day before?

A. Yes, sir.

Q. Weren't you told by Mr. Prior subsequent to the meeting of November 19th that you were still being carried on the payroll of the Boswell Company and that you could go back to work any time you chose? A. No, sir. [373]

Q. You were still carried on the payroll, weren't you?

A. For a few days, yes, sir.

Q. You were carried on until December 3rd, the end of that week, weren't you?

(Testimony of O. L. Farr.)

A. Well, probably—I don't recall what day. I was carried on the payroll after that date.

Mr. Clark: May I have Board's Exhibit 3?

(The record book referred to was passed to Mr. Clark.)

Q. (By Mr. Clark): Well, didn't you even receive a payment, Mr. Farr, and I will let you look at the amount of it so that you can refresh your own recollection concerning it, didn't you even receive a payment for the week ending December 8th?

A. (Examining records) (Pause.)

Q. Look at that list of payments there. And may I particularly direct your attention to all of the payments which this Exhibit indicates as having been made to you continuously clear from November 17th to December 8th?

Mr. Mouritsen: Now, may I have that question in its entirety?

Mr. Clark: I said, may I call your attention particularly to all of the payments which the record indicates were made to the witness continuously from November 17th to December 8th.

It is not a question or a statement of fact. It is simply an attempt to direct his attention to a part of an Exhibit which is already in evidence. [374]

The Witness: I don't recall. I recall getting checks. I have a record of them. I haven't them with me, but I recall getting checks after the 18th.

(Testimony of O. L. Farr.)

Trial Examiner Lindsay: For a point of information right here, what period were those checks covering? What period of work, or time, rather, that you did work did those last checks that you received after the 18th cover?

The Witness: Well, it should have covered the time approximately after I was gone, after the 18th.

Trial Examiner Lindsay: In other words, that isn't for any work that you did after the 18th, is it?

The Witness: No, sir.

Q. (By Mr. Clark): Well, it is correct, though, isn't it, Mr. Farr, that it was for time after the 18th?

A. But not work. I suppose it was checks, but I didn't work.

Q. Here, let us see if we cannot straighten it out.

I will show you Board's Exhibit 3, and particularly the page entitled with your signature, Oliver L. Farr, and I want to direct your attention to the entry 11-17, which would be November 17th, \$32.00.

Now, that indicates, doesn't it, and by the way, this is the year 1938 as you will see right here?

A. Yes, sir.

Q. That indicates, doesn't it, the payment which you received for the work which you actually did during the week [375] ending November 17th, isn't that right?

A. That is right.

Q. Now, you worked all that week, didn't you?

(Testimony of O. L. Farr.)

A. Yes, sir.

Q. And you were working at a ginner?

A. Yes, sir.

Q. All right.

Now, you will notice that right after that is a payment of \$29.00 for—opposite, rather, the figures 11-24, you see? A. Yes, sir.

Q. Will you please state whether or not you received a check for \$29.00 or for some such amount, as nearly as you can remember, a week later?

A. I received a check, but I can't recall the amount.

Q. Now, that check you received wasn't paying you for any work you had done prior to November 17th, was it? A. No, sir.

Q. In other words, you had been paid up right to the time you left the plant except for whatever work you did on the 18th; isn't that right?

A. I was paid on the following Saturday.

Q. You don't understand my question.

On November 17th, when you got your weekly pay—

A. (Interrupting): I didn't get it that day.

Q. Well, whenever you got your \$32.00 check—

A. (Interrupting): On the last of the week. [376]

Q. All right.

It paid you up to the 17th, didn't it?

A. (Pause.)

(Testimony of O. L. Farr.)

Mr. Mouritsen: I object. If the witness knows. Mr. Robinson testified as to the payroll periods and, of course, this is all subject to his explanation of the manner of payment.

Mr. Clark: The things I am trying to get out is this: I think the Examiner misunderstood the question.

Trial Examiner Lindsay: I both misunderstood you, and the witness.

Now, is there a contention that this man worked for your Company after November 18th, 1938?

Mr. Clark: There is this contention—no, he didn't do any work, but there is this contention—but——

Trial Examiner Lindsay (Interrupting): Well——

Mr. Clark (Interrupting): Let me explain the answer.

Trial Examiner Lindsay: Let me finish what I want to get through first.

Now, in your question, which is misleading in the record, you said for work which you did after November 18th, 1938.

Now, I don't want to be misled on the facts and I know you don't intend to, and I want it in the record just exactly the way it is; regardless of how it is, I want it that way.

Now, I think I know what you are getting at, but your question is misleading, both to me and to the record. [377]

(Testimony of O. L. Farr.)

Mr. Clark: I think, Mr. Examiner, that when the record is written up you will find that my question is perfectly clear, and I would like to make this explanation with respect to it. We do not contend, and it is not the fact, that Mr. Farr actually performed any labor at the Boswell plant after he left on November 18th, but he was paid for a period ending December 8th, just as though he had worked; and upon the representation made—as will come out as part of our case—that these men who voluntarily quit on that day were carried along for the same length of time as they would have had they not left, depending on the amount of work left.

In other words, if there was work for them, they were paid for that length of time, which in his case was up to December 8th. And at all times, and this was the burden of the question I asked Mr. Farr a few minutes ago—they were told at all times that the jobs were there if they wanted them.

He in fact received payments up to December 8th for work which he never did. I won't go into that yet.

Mr. Mouritsen: Mr. Examiner, I am going to object very strenuously to this method of testimony on behalf of counsel purportedly in explanation of some——

Trial Examiner Lindsay (Interrupting): I will say this, I won't consider the statements of attorneys as to facts until the proof is in. [378]

(Testimony of O. L. Farr.)

When I asked for just a short explanation in a matter, I wouldn't go into the question of what you deem are facts because you are not under oath and are not testifying.

Mr. Clark: Very well.

May I see if I can't clear this up with one question, your Honor?

Trial Examiner Lindsay: Yes.

Mr. Clark: All right.

Q. Going back for a moment, Mr. Farr, it is correct, isn't it, that when you ultimately received the \$32 payment for the week ending November 17th, that paid up to and including the 17th for everything you had done for the company, isn't that right?

A. Well, I couldn't say, but I really think so.

Q. All right.

So that after you got that \$32 check, then you only had coming at any subsequent date just your pay for the 18th so far as any work that you actually performed is concerned?

A. That is right.

Q. All right.

You did, however, receive checks as shown by this record for the week ending the 24th, for the week ending December 1st and the week ending December 8th, didn't you?

A. I don't recall just exactly. I—just as I stated, I recall that I received some checks after I quit work. [379]

Q. I understand that.

(Testimony of O. L. Farr.)

A. After I was run out.

Mr. Clark: I move that go out. May that go out?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark): And is your recollection of that to the effect, Mr. Farr, that those checks were received by you for about two or three weeks after the time you left?

A. They wasn't as large checks as I had drawn—you can see here the checks come considerably down. I had been drawing \$42 and \$36 and considerably under \$40, and on down.

Q. You weren't doing any work during that time, were you? A. No, sir.

Q. Will you, then, answer me. Answer the question that I put to you.

Is it your recollection that you were still being paid for as long as two to three weeks after November 18th? A. Yes, sir.

Q. All right.

How did you obtain these checks? How did you get them physically?

A. I was down and got the one on the first Saturday, and if I recall, the rest of them were sent to me.

Q. Well, now, the first Saturday after November 18th would be when? [380]

A. The 19th I went down and got my check.

Q. That would be the following day?

A. Yes, sir.

(Testimony of O. L. Farr.)

Q. And, of course, you went on the company property to get it, didn't you?

A. I went to the office, the pay office.

Q. Yes.

And you found quite a few of the employees of the company around, didn't you?

A. I saw Mr. Hammond.

Q. That is, Mr. Gordon Hammond?

A. Mr. Gordon Hammond.

Q. I see.

And did you ask him for your check?

A. He handed me the check. He handed the check to me.

Q. Did you ask him at that time about coming back to work? A. Not at that time.

Q. Did you make any request to him at all to come back on the job? A. Yes, sir.

Q. I mean, on that occasion at that time?

A. Yes, sir.

Q. What did you say about that?

A. I told him I was ready to come back to work.

Q. This was on the morning of the 19th, is that true? [381]

A. It was later than the morning of the 19th.

Q. And about what time would you say?

A. It was some few days later.

Q. Oh.

I am only concerned with the time——

Trial Examiner Lindsay (Interrupting): He answered that. Didn't you ask him on that morning when he got his check?

(Testimony of O. L. Farr.)

Q. By Mr. Clark: When you came back to the plant on Saturday the 19th to get paid, nothing was said between you and Mr. Hammond at that time concerning your coming back on the job, is that true?

A. No, sir; I don't believe there was anything said.

Q. Did you receive a check at that time?

A. For my past week that I had worked.

Q. And that is the week ending the 17th?

A. Yes, sir.

Q. All right.

Now, the following week, then, the following Saturday you got another check, didn't you?

A. I——

Trial Examiner Lindsay (Interrupting): We have gone over that.

Mr. Clark: I wanted to find out if he went back to the company plant. [382]

Trial Examiner Lindsay: Ask him that.

Q. By Mr. Clark: Did you pick up the other checks there?

A. I don't recall that I did.

Q. How did you get them?

A. They were sent to me by Mr.—Mr. Yankee Robinson brought one of them, a bookkeeper in the office.

Q. You say you had another conversation with Mr. Gordon Hammond about coming back on the job, a few days after Saturday, the 19th, is that true?

(Testimony of O. L. Farr.)

A. Yes, sir.

Q. And where was that, please?

A. It was at the office.

Q. And who else was present?

A. I believe that Mr. Spear was sitting in the office talking to Mr. Gordon Hammond.

Q. What was the occasion at this meeting between Spear and you and Gordon Hammond?

A. They was in conference and I walked in. I didn't know Mr. Spear was there, and I walked to the door and Mr. Hammond came out.

Q. What was the purpose of your visit there to Mr. Gordon Hammond?

A. I was there—I had three hours' time coming that I had worked for on the week before.

Q. On the 18th, is that right? [383]

A. And—yes.

Q. Yes.

A. And I went down and to my best recollection my check had been sent to me; and I asked Mr. Hammond about coming back to work.

Q. All right.

What was the purpose of your calling on Mr. Hammond in the middle of the week? To get your pay on the 18th?

A. It wasn't in the middle of the week. It was the following Saturday on payday.

Q. Would that be the week following Saturday the 19th? A. Yes, sir.

Q. This wasn't on the 19th? A. No, sir.

(Testimony of O. L. Farr.)

Q. It was a week after the 19th? A. Yes.

Q. 26th—27th—26th, I guess.

Trial Examiner Lindsay: It was on the following Saturday after the 19th.

Q. (By Mr. Clark): Did you pick your check up then?

A. No, sir. Someone had already picked it up.

Q. That was Mr. Yankee Robinson?

A. No, that is not the check he picked up.

Q. Someone else had picked it up for you?

A. Yes. [384]

Q. But on going to Mr. Gordon Hammond's office you found there Mr. Spear? A. Yes, sir.

Q. Now, at that time did Mr. Hammond tell you that you could come back on the job any time you wanted to? A. No, sir.

Q. Are you sure of that?

A. Yes, sir; he said I could not.

Q. Give us the whole conversation there.

A. (Pause)

Q. Give us the conversation. Everything he said.

A. I walked to the door and Mr. Spear and he was sitting in his office, and I said, "Excuse me. I didn't know anyone was in here."

Mr. Hammond came out, and I asked him if I had a little check.

And he says, "Yes." And he looked for it, and it wasn't there, to the best that I recall.

I said—he said, "Is your name still O. L. Farr?"

And I said, "Yes. I haven't changed my name."

(Testimony of O. L. Farr.)

I said, "I am ready for work."

And he said, "Well, under these conditions we can't use you at this time."

He said that he had already told Mr. Farr that he couldn't use us fellows now. Mr. Prior had asked him and reported to [385] me that he couldn't use us any more.

Q. Mr. who had?

A. Mr. Prior had told us in a conference at the office that we couldn't go back to work, that—to be exact, he said they would feel out the sentiment of the men to see about us coming back to work.

Q. All right.

Was there any discussion at that time between you and Mr. Hammond respecting you and Spear going into farming for yourself?

A. Not at that time; no, sir.

Q. There had been some discussion of that, hadn't there?

A. I had talked—we had talked different times about farming.

Q. And your talks in that regard were with Mr. Gordon Hammond, weren't they?

A. Yes, and on one occasion I talked to him about farming.

Q. Well, didn't you—can you fix the time of that, please?

A. No, sir.

Q. Well, approximately for us.

A. Oh, it was about some time in the fall.

Q. Some time during that fall?

(Testimony of O. L. Farr.)

A. Yes, sir.

Q. And didn't you—was anyone else present when you talked [386] to him about you and Spear going into farming?

A. I didn't talk to him about Spear and I going into farming. [387]

Q. Well, did you talk to him about yourself going into farming?

A. I told him—I spoke to him about farming, the conditions of farming and how they farmed in this country.

Q. Didn't you tell Mr. Hammond at that time that you did not intend to stay with the Boswell Company, but you intended, together with Mr. Spear, to go into farming for yourself?

A. No, sir.

Q. The answer is No? A. No, sir.

Q. Did you have any conversation at all along that line with Mr. Gordon Hammond?

A. No, sir.

Q. At any time?

A. Not about going into the farming with anybody. I talked about farming.

Q. Well, did you tell Mr. Gordon Hammond that you intended to leave the Boswell Company and to establish yourself on a farm in this vicinity?

A. No, sir.

Q. Did you make that statement to Mr. Hammond at any time? A. No, sir.

Mr. Clark: That is all.

(Testimony of O. L. Farr.)

Mr. Mouritsen: No redirect. [388]

There is just one.

Redirect Examination

Q. (By Mr. Mouritsen): During the period that you worked for the J. G. Boswell Company, did you ever receive any complaints regarding your work?

A. No, sir.

Q. Did you ever receive any compliments regarding your work?

A. Yes, sir. Mr. Hammond told me when I went over to the Anderson & Clayton Company that my work was satisfactory with him.

Q. Was that the occasion when you left, I believe, during the month of July, '37 or '38?

A. Yes, sir.

Q. Which year was it? A. '37.

Mr. Mouritsen: '37.

Nothing further.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Mr. Mouritsen: We are now ready to put Mr. Prior on the stand for cross-examination.

Trial Examiner Lindsay: Would you like a little recess?

Mr. Clark: Yes, your Honor.

Trial Examiner Lindsay: We will have a ten minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:) [389]

Trial Examiner Lindsay: Hearing called to order.

E. F. PRIOR

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Mr. Clark: Are you turning this witness over for cross-examination?

Mr. Mouritsen: Yes, Mr. Clark.

Mr. Clark: I suggest, Mr. Examiner, that perhaps it would be better to have Mr. Prior's cross-examination follow right where it occurs in the record, because we have only had one break.

Trial Examiner Lindsay: I think we have taken care of that, Mr. Clark. I believe we said the other day at the end of this hearing the reporters would re-arrange it to get this thing in order.

Mr. Clark: Very well. That is the way I understood it, too, but there still was left open the matter if it proved to be advisable. I was only suggesting that there was only one break, and it would be better to have the record show exactly the way in which it came up.

Trial Examiner Lindsay: The record already shows it. Let us not continuously go over things that we have taken care of. [390]

Cross-Examination

Q. (By Mr. Clark): Mr. Prior, what is the California Council of Edible Oil Workers?

(Testimony of E. F. Prior.)

A. The California State Council of Soap and Edible Oil Workers is composed of a number of directly affiliated Unions in the State of California.

Q. And do these directly represented Unions have representatives on the Council of Edible Oil Workers?

A. The California State Council of Soap and Edible Oil Workers, yes.

Q. In other words, this Local that we are concerned with in this case has a representative on that Council, is that true?

A. Each Local has representation in proportion to the membership of the Local. Q. I see.

Who is the representative from the Local Union?

A. I believe Mr. Farr and Mr. Martin are the elected delegates to the State Council.

Q. I see.

And for how long have you held the position as secretary of the State Council?

A. Ever since July 1, 1938.

Q. I see.

How old is the Council, by the way?

A. It was incepted and officers were elected July 1, 1938. [391]

Q. July 1st of last year? A. Yes.

Q. Is that right? A. Correct.

Q. Now, does the Council hold a charter direct from the American Federation of Labor?

A. No.

Q. What authority does it operate under, the Council operate under?

(Testimony of E. F. Prior.)

A. The authority of the affiliated Locals.

Q. And this Council that we are talking about, the California Council of Edible Oil Workers, of which you are the secretary, is not, then, chartered by the American Federation of Labor, is that true?

A. That is true.

Q. I believe you stated on your direct examination that each of the Locals—withdraw that.

I believe you stated on your direct examination that this particular Local which is involved in this case, and which was organized on the date the charter which is in evidence bears, is directly chartered by the American Federation of Labor and is called a Federal Union? A. Yes.

Q. Is that true? A. Yes. [392]

Q. Who did you represent when you first approached Mr. Farr; that is the Mr. Farr who has just testified here, with respect to organizing the employees of Boswell and Company in March of 1938?

A. The Soap and Edible Oil Workers Union, Local No. 18409; the Soap and Vegetable Oil Workers Union, Local No. 20283; The Cotton Seed and Vegetable Oil Workers, Local No. 21312; The Cotton Seed and Vegetable Oil Workers Union, Local No. 21291, and the Soap and Cosmetic Workers Union, Local No. 21361.

Q. Now, will you—

A. (Interrupting): All in the State of California.

Q. Will you please tell us where those Unions respectively are located?

(Testimony of E. F. Prior.)

A. Local No. 18409 is in Wilmington; Local No. 20283 is in Los Angeles; Local No. 21361 is in Burbank, and Local No. 21312 is in Bakersfield, and Local No. 21291 is on Coachilla.

Q. All right.

Now, will you please state whether or not the membership of those Locals is composed of the—withdraw that.

Will you please tell us—withdraw that.

Will you please define, very briefly, for us, Mr. Prior, if you will, the jurisdiction of the Locals you have just referred to so far as admissibility to membership is concerned [393] or eligibility to membership is concerned?

Mr. Mouritsen: I object to this—

Mr. Clark (Interrupting): I will submit it.

Mr. Mouritsen (Continuing): —on the ground it is immaterial.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark): What position did you hold with those Locals in March of 1938?

A. Business representative.

Q. For each and every one of them?

A. Yes.

Q. I see.

And were each of these Unions directly chartered by the American Federation of Labor at that time?

A. Yes.

Mr. Mouritsen: I object to that as immaterial.

Trial Examiner Lindsay: Just a moment. Let us get down to this Union.

(Testimony of E. F. Prior.)

Mr. Clark: I would like to find out what this man is doing, attempting to organize Unions at the Boswell plant. That is what I would like to find out.

Trial Examiner Lindsay: It is of no interest here as to what they are doing at some other place. Let us direct our questions to the issues before us.

Mr. Clark: I think we are entitled to know, Mr. Examiner, [394] who he is and a little more about him.

Trial Examiner Lindsay: I think he has told you. I am not directing my remarks to anything pertaining to any information regarding the particular witness.

Mr. Clark: I see.

Trial Examiner Lindsay: The only thing I am telling you is that it is of no interest in this hearing what some other Local is doing.

Mr. Clark: I see. I will try not to go into that.

May I have the question which gave rise to this, Mr. Reporter?

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: The answer may go out.

Q. Were you instrumental in organizing each of the Unions you have named?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I submit it.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark): For how long had you been

(Testimony of E. F. Prior.)

—for how long prior to March of last year had you been the Business Representative for all or any of the Local Unions you have just given us?

Mr. Mouritsen: Objected to as incompetent, irrelevant and [395] immaterial.

Mr. Clark: I submit it.

Trial Examiner Lindsay: He may answer that.

The Witness: Since April 20th, 1934.

Q. (By Mr. Clark): And what was your occupation prior to that time, Mr. Prior?

A. I was in charge of merchandise, unloading and warehousing for Foster & Gamble Manufacturing Company at Long Beach, California.

Q. I see.

And that had to do with the loading and unloading of merchandise from ships, is that right?

A. Packing supplies for the packing of the materials.

Q. I see.

A. In the process of manufacture.

Q. And from the period of time, from the date in 1934 you have just given us, up to the present time, you have engaged in organizing various Local Unions, is that true? A. Yes.

Q. All right.

Now, how did you happen to contact Mr. Farr in March of 1938 as the first of the Boswell employees to whom you would talk concerning organizing a Union in this plant?

A. His brother in Bakersfield stated that he had

(Testimony of E. F. Prior.)

been over visiting his brother here in Corcoran and that the conditions, [396] wages had been discussed in that visit, and that they were below those that had just been negotiated at the Bakersfield plant of the San Joaquin Cotton Oil Company, and that from the discussion with his brother the employees at the Boswell plant were interested in an organization of their own.

Q. All right.

And as a result of that you had this conversation—you made this contact which you have described to us on your direct examination, with Mr. Farr, sometime in March of 1938, and the various subsequent visits here until we get up to the issuance of invitations to the employees of the Boswell Company to attend an open meeting to discuss the purpose of organization, isn't that true?

Mr. Mouritsen: Now, Mr. Examiner, I submit that there are at least five or six questions—

Mr. Clark (Interrupting): I am only trying to cover a period of time. I will withdraw the whole question.

Q. In July of 1938 you had a list of employees of the Boswell Company turned over to you, by one of the former employees of the Company, didn't you?

A. No.

Q. Well, it was turned over to you by Mr. Farr, but it had come from a former employee of Boswell Company, isn't that so?

A. I don't know about that. [397]

(Testimony of E. F. Prior.)

Q. Well, where did the list come from? Let me ask you that?

A. Mr. Farr gave it to me.

Q. Mr. Farr gave it to you? A. Yes.

Q. Whom had you requested to furnish you with such a list?

A. I had asked Mr. Farr about the names and addresses of the boys of the Boswell plant.

Q. I see.

And when did you ask him for such a list?

A. On or about July 6th, 1938.

Q. And as a result of that request, he delivered a list to you, is that right? A. Yes.

Q. And then a meeting was held here in Corcoran, isn't that right, in fact, in this very building, subsequent to July 6th?

A. Subsequent to July 6th, yes, sir.

Q. And prior to that meeting, had you sent out invitations to a number of employees of the Boswell Company to attend it? A. Yes.

Q. How many invitations would you say you sent out?

A. I would say between 30 and 40.

Q. I see.

How many people appeared at your meeting? [398]

A. Approximately 6 or 8.

Q. And when was the meeting held with respect to July 6th? A. On July 13th, 1938.

Q. Yes.

(Testimony of E. F. Prior.)

Now, how long after that meeting was it that you filed a charge against Boswell and Company with the National Labor Relations Board, rather with the Regional Director, the Director of the Twenty-first Region of the National Labor Relations Board in Los Angeles?

A. On or about July 17th or 18th.

Mr. Clark: Have you the original of that charge, Mr. Counsel?

Mr. Mouritsen: May I see the file, Mr. Reporter?

(The documents referred to were passed to Mr. Mouritsen.)

Mr. Mouritsen: Not if it bears date of on or about July 17th, 1938.

Was that it? The original charge that we have in this matter is dated November 21, 1938.

Mr. Clark: That is the charge that is in evidence in this matter, isn't it, the original charge you refer to?

Mr. Mouritsen: Yes.

Mr. Clark: Dated in November?

Mr. Mouritsen: Yes, that is correct.

Q. (By Mr. Clark): You swore to the charge filed in July, didn't you? [399] A. Yes.

Q. Have you a copy of it with you?

A. No.

Q. Well, have you a copy of it in your files, not with you on the stand?

A. I am not sure. I believe there is.

Q. May I ask that the witness—

(Testimony of E. F. Prior.)

Trial Examiner Lindsay (Interrupting): Will you gentlemen come up here, please?

(Conference between counsel and the Examiner at the bench.)

Mr. Clark: May I have the last question re-read, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: May I ask, Mr. Examiner, that the witness be allowed to step down from the witness stand and produce his copy, if he has it, of the charge testified to on his direct examination as having been filed by him with the National Labor Relations Board in July of 1938 against the Respondent, Boswell, Boswell Company?

Mr. Mouritsen: Mr. Examiner, I think that we would be going into collateral issues that have no bearing before this case. There is a charge here on file to which the witness has sworn. Now, it is the position of the Board that there is no [400] point to be gained by investigating any prior charge that the witness may have filed in any other matter.

Mr. Clark: My purpose, Mr. Examiner, in asking that question, is not to, in any manner, attempt to—rather—do anything other than to attack the credibility of this witness because of the charge which he has testified he swore to in July of 1938 as con-

(Testimony of E. F. Prior.)

trusted with the present allegations of the 4th amended charge.

Trial Examiner Lindsay: The objection is sustained. You may proceed.

Q. (By Mr. Clark): What knowledge did you have of the conditions at Boswell Company at the time you filed this charge with the National Labor Relations Board in July of 1938?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: Sustained. [401]

Q. (By Mr. Clark): Had you made any actual investigation of the conditions at the Boswell plant at the time you filed that charge?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: Sustained.

Mr. Clark: May it please your Honor, of course it seems to me——

Trial Examiner Lindsay (Interrupting): The only charge we are involved with here is the fourth amended charge upon which the complaint has been based.

Mr. Clark: Yes, but of course the point is, may it please the Examiner, that if I can show that this witness, without any knowledge at all of a situation at the Boswell plant, filed a charge against the company in July of 1938, and swore to it, it seems to me that that fact affects his credibility as being the

(Testimony of E. F. Prior.)

signatory of the present charges, namely those contained in the fourth amended complaint; rather, in the fourth amended charge which we are called upon to meet here today, and that is the purpose of going into that matter.

Trial Examiner Lindsay: You were meeting the allegations contained in the fourth amended charge by the various witnesses who are involved in that charge, and you have a right to go into all the matters involved in the charge by way of [402] examination of those witnesses.

Now that is, in substance, your case.

Mr. Clark: Yes; but this man is the man who is making the charge, your Honor.

Trial Examiner Lindsay: Let us proceed.

Mr. Clark: I simply submit his conduct in a prior occasion is material. Very well.

Q. What employees of the Boswell Company had you talked to with regard to organizing a union affiliated with the American Federation of Labor in the plant prior to July 13, 1938?

Mr. Mouritsen: I object to the question upon the ground it is vague and indefinite in that "in the plant" is inserted in there so we are uncertain as to what it refers to, whether the conversations were in the plant—(Pause)

Mr. Clark: I will withdraw it if that is the objection, and reframe it.

Q. Did I understand you to say that this meeting held here in Corcoran was on July 13, 1938?

(Testimony of E. F. Prior.)

A. Yes.

Q. That is the correct date, isn't it?

A. Yes.

Q. All right.

Now, prior to that time what employees, persons actually employed by the Boswell Company, up to July 13, had you talked to with respect to organizing an A. F. of L. union? [403]

A. Prior to July 13, 1938, the only Boswell employee that I had talked to in regard to organizing was Mr. O. L. Farr.

Q. All right.

Now, what former employees of the Boswell Company had you talked to in that regard prior to July 13th of last year?

A. I don't know. I may have met many of them that had worked for Boswell, but not to my knowledge.

Q. All right.

So far as you are concerned then, at the present time, Mr. Farr was the only Boswell employee with whom you were taking up that matter, is that right?

A. Yes.

Q. Now, at the time you filed this charge before the National Labor Relations Board on July 17th, I think you said the date was, what employees of the Boswell Company had you discussed the matter of the organization of an American Federation of Labor Union with?

Mr. Mouritsen: Object to that as incompetent, irrelevant and immaterial.

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: Well, he may answer.

The Witness: The employees, as I recall that attended a meeting here in this hall, here in Corcoran, were a gentleman known as Bill Robinson, Frank Gonder or Gonders—I am not sure which—Clyde Sitten, Jack Owens, and the former employee, Mr. Gilmore. [404]

Q. (By Mr. Clark): The last name is Gilmore?

A. Yes.

Q. All right.

How many of those persons, if any of them, ultimately became members of the local union which you organized here later that year?

Mr. Mouritsen: That is objected to on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: May I have the question, please?

(The pending question was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Now, by that you mean those people that attended that meeting?

Mr. Clark: That is right.

Trial Examiner Lindsay: He may answer.

Q. (By Mr. Clark): Take your time and go through the list in your mind.

A. Your Honor, I can't answer that question.

Q. Why not?

A. Quite often in my work in organizing I give my word to those who make application for mem-

(Testimony of E. F. Prior.)

bership that I will not divulge their names or give any indication that an employer might be able to ascertain who belongs or who does not belong to the union. [405]

Q. Well, is it your testimony then, Mr. Witness, that any of the persons present at that union meeting, aside from Mr. Gilmore, became members of it?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I will withdraw that question and simply ask the Examiner if this witness is going to be permitted, in effect, to refuse to answer a question to which an objection has been overruled.

Mr. Mouritsen: Mr. Examiner, in that regard, the question is regarding an immaterial matter that can only be a very collateral issue and has no bearing upon the case. I interposed my objection then and I desire to renew it at this time.

Trial Examiner Lindsay: Well, in view of the fact that there is not an A(5) charge in this complaint, he does not have to answer the question if he wants to insist upon relying on his confidential relationship between the members and himself.

Mr. Clark: Very well. I hope that rule is as broad as it is long, Mr. Examiner.

Trial Examiner Lindsay: I just don't understand what you are driving at, Mr. Attorney.

Mr. Clark: Perhaps we will come to some part in the case where we will rest upon certain privileges, too. [406]

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: If they are justifiable, they will be treated as such.

Mr. Clark: I expect that.

Q. How long after the meeting of July 13th was it that you in fact organized the local union involved in this case?

A. A charter was installed on November 5, 1938.

Q. But you heard Mr. Farr testify a few moments ago, or an hour ago—at any rate, during this afternoon—that he joined on September 2nd, didn't you?

A. Yes.

Q. So that I am correct in stating, am I not, that your organization was formed a good many weeks before the charter was actually issued?

A. There were a number of applications taken, yes. [407]

Q. All right.

Well, didn't you have a going organization before you actually applied for the issuance of a charter by the American Federation of Labor?

A. There were no officers elected until November 5, 1938.

Q. All right.

When did you take the first application from an employee at Boswell and Company for membership in this union?

A. On or about September 2nd of 1938.

Q. I see.

So that between your meeting of July 13th and the time you filed these charges of July 17th with

(Testimony of E. F. Prior.)

the National Labor Relations Board, and September 2nd, if I understand you correctly, there were no applications taken from an employee at the Boswell plant for membership in this proposed union?

Mr. Mouritsen: May I have the question read?

Trial Examiner Lindsay: Yes.

(The question referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: I object to it as vague and indefinite.

Mr. Clark: Submit it.

Trial Examiner Lindsay: Do you understand the question?

The Witness: Well, I believe the question——

Mr. Clark (Interrupting): If there is any doubt about [408] it, I will reframe it, Mr. Witness.

Q. Did you take any applications for membership in the proposed union prior to September 2nd?

A. No.

Q. Did you talk to any of the employees then working at Boswell regarding joining the proposed union prior to September 2nd? A. Yes.

Q. And when was the first time after July 13th, the date of the Corcoran meeting, that you next talked to any Boswell employee regarding the organization of your proposed union?

A. September 2nd.

Q. Then, do I understand that there was no activity at all on your part between the meeting of July 13th and the date of September 2nd?

(Testimony of E. F. Prior.)

Mr. Mouritsen: Objected to as too broad and too general.

Q. (By Mr. Clark): Do I understand that there was no activity on your part with respect to organizing this particular local union between July 13th and the date of September 2nd?

A. There was activity.

Q. Well, you have told us that you didn't talk to any of the Boswell employees in an attempt to get them to join the proposed union during that time, isn't that true? A. Yes.

Q. And you didn't hold any meetings, isn't that true? [409] A. Yes.

Q. And you didn't sign—have anyone sign applications, not even Mr. Farr, isn't that true?

A. Yes.

Q. Did your activity consist merely of having filed this charge with the National Labor Relations Board?

A. That and an exchange of correspondence with Mr. Gilmore and Mr. Farr, yes.

Mr. Clark: All right.

At this time, Mr. Examiner, I am going to make a formal demand upon counsel for the original of the charge referred to by this witness as having been filed by him with the National Labor Relations Board, Twenty-First Region, I think the testimony shows, on July 17, 1938, against the respondent, Boswell and Company.

Mr. Mouritsen: Mr. Examiner—

Mr. Clark (Interrupting): Simply for the rec-

(Testimony of E. F. Prior.)

ord. I don't want to argue, and I will take the ruling on it.

Mr. Mouritsen: Mr. Examiner, with reference to that demand, I state that the position of the Board is that it is entirely out of order inasmuch as the original of the charge is not available to me and I have been informed that it is no longer in our office inasmuch as it has been transferred to another office of the National Labor Relations Board over which I have no control and with which I have no connection. [410]

Mr. Clark: All I want is a ruling, Mr. Examiner, on the relevancy of the demand. So far as the mechanics are concerned, I will wait any length of time until it gets here to examine Mr. Prior on it or have it produced.

Mr. Mouritsen: I will object to its being furnished in any event in that it will not tend to prove or disprove the issues in this matter.

Mr. Clark: I submit the objection.

Trial Examiner Lindsay: The objection is sustained.

Mr. Clark: And the demand refused, Mr. Examiner? Is that true?

Trial Examiner Lindsay: No, Mr. Attorney. I sustained the objection.

Q. (By Mr. Clark): You had a meeting on September 2nd of 1938 at which various people signed up in your union, didn't you? A. Yes.

Q. And among them, Mr. Farr actually signed an application at that time? A. Yes.

(Testimony of E. F. Prior.)

Q. That is so.

Now, immediately following this episode of November 18th, namely, on the morning of November 19, 1938, did you have a meeting with Mr. Gordon Hammond at his office at the Boswell plant here in Corcoran regarding the events of the preceding [411] day?

A. Mr. Gordon Hammond and Mr. Robinson.

Q. And Mr. Louis T. Robinson? A. Yes.

Q. You are speaking of Mr. Hammond, the plant superintendent, and Mr. Robinson, the general manager of this plant, is that right? A. Yes.

Q. Who else was present besides yourself and Mr. Robinson and Mr. Hammond?

A. Mr. Spear and Mr. Martin.

Q. Now, by that time Mr. Spear had become the president of this local union, hadn't he?

A. Yes.

Q. And did Mr. Martin hold any position?

A. Financial secretary-treasurer.

Q. Right.

Had Mr. Martin been employed on the day before?

A. Yes.

Q. I mean, he was employed at Boswell's on the day before when these things happened that Mr. Farr testified to this afternoon, is that right?

A. Yes.

Q. Now, at that meeting on the morning of November 19, will you please tell us whether or not Mr. Robinson stated to [412] you and to Mr. Martin

(Testimony of E. F. Prior.)

and to Mr. Spear that the men who had left the plant on the preceding day were still on the payroll and could come back to work whenever they pleased?

Mr. Mouritsen: Objected to as including the identity of a person not known and mentioned in the evidence prior to this time, and compound.

Mr. Clark: Who is that?

Mr. Mouritsen: Mr. Robins.

He has testified that Robinson and Hammond and Spear and Martin and himself were all there having a meeting about the matters which had occurred on the preceding day. And he asked him for a statement of Robins.

Mr. Clark: Robinson. Did you have——

Trial Examiner Lindsay: He may answer.

Q. (By Mr. Clark): Did you have that in mind?

A. Yes.

Q. And bear in mind that I am asking you for that statement or any statement or any statement which is in substance or effect similar to it?

A. All right. I asked Mr. Robinson about the status of these employees in relation to their pay.

Q. Yes.

A. I raised that question in the conference.

Q. Yes.

A. And Mr. Robinson says, "Well," he says, "We will have to [413] give that some consideration. We will think that over."

Q. Well now, the thing I am asking you, Mr.

(Testimony of E. F. Prior.)

Prior, is this: Didn't Mr. Robinson tell you that these men could come back to work any time they chose? A. No.

Q. And that they still would be continued on the payroll? A. No.

Q. You are positive of that?

A. I am positive of that.

Q. Will you say that Mr. Robinson made no such statement to you on that occasion?

A. Mr. Robinson when I raised the question in regard to these men being on the payroll—I asked that question——

Q. (Interrupting): Will you please tell us how you asked it? How it came up, I mean?

A. Well, the meeting had been called for the purpose of determining whether or not these men would be and could be reinstated and be placed back on their jobs in the same status that they had been prior to 10:00 o'clock the morning before.

Q. How had that status changed, please?

A. They had been evicted from the plant.

Q. Well now, was that your position in the matter that they had been evicted from the plant?

A. Yes.

Q. You know, Mr. Prior, that these men had not checked with [414] Mr. Robinson when they left, didn't you?

A. They reported to me that they had left the plant and had, through the vice-president of the organization, called Mr. Robinson by telephone.

Q. Well, as a matter of fact, didn't you talk; and

(Testimony of E. F. Prior.)

I wish you would give this some thought, didn't you talk—didn't you call Mr. Farr immediately you found out that something had happened at the Boswell plant on the morning of November 18th and instruct him to call Mr. Robinson and advise Mr. Robinson that they, the employees, had left?

A. No, I did not.

Mr. Mouritsen: I object.

Mr. Clark: The answer is no.

Q. When you first heard about the matters of November 18th, you were told, weren't you, that—by Mr. Farr or whoever reported it to you or when you saw him—that Mr. Robinson had told all of these employees to go back to work and cool down and that he would straighten the matter out later? Weren't you told that?

Mr. Mouritsen: Objected to as compound and unintelligible.

Trial Examiner Lindsay: Sustained. [415]

Mr. Clark: Well, we will simply have to go back a little further.

Q. As I understand your direct examination, you were at Bakersfield the morning of November 18th, is that right?

Trial Examiner Lindsay: Mr. Attorney, you may ask that question if you will just——

Mr. Clark (Interrupting): I can ask it quicker than trying to reframe it.

Trial Examiner Lindsay: Leave out evidence that is not in the record. Mr. Farr didn't testify to anything of that nature.

(Testimony of E. F. Prior.)

Mr. Clark: As a matter of fact I have the right on cross-examination to ask questions assuming things which are not in the record, Mr. Examiner.

Mr. Mouritsen: Mr. Trial Examiner, counsel has done that on a number of occasions. It is the position of the Board that it is an extremely unfair practice. It is not the right of counsel to try to entrap witnesses. We are trying to ascertain the facts.

Mr. Clark: I am trying to ascertain the truth. I am not trying to trap anybody.

Trial Examiner Lindsay: Let me make this statement.

Whether on direct examination or cross-examination, you never have a right to misquote the testimony of a witness. Now, you have a right to make a statement as to what some one [416] claims a witness has said, but to misquote a man's testimony in a question, I do not concede that any attorney on direct or cross has a right to resort to that sort of thing.

Mr. Clark: I am not mis-quoting anybody's testimony, or even attempting to quote anybody's testimony. If your Honor will have the record read back, you will see I am not attempting to quote Mr. Farr's testimony or anyone else's testimony.

Trial Examiner Lindsay: That was my understanding. I am telling you not to do it.

Proceed.

Mr. Clark: I have never in any trial, and I am not in this trial trying to mis-quote a witness.

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: Let us have an understanding.

When I give an order to have certain things done, I expect an attorney to do it without arguing. You have your ruling on the record, and I am not giving anything contrary to the bare fact that I want merely the facts in the case. Now, I stated that I do not want any testimony mis-quoted.

Now, if you haven't mis-quoted it, all right, but let us not do it.

And when I make a statement, it isn't necessary that attorneys start arguing. This hearing is going on in a very orderly way. That is the only way we will ever get through with it, and that is—those instructions I have given are with [417] due respect to everyone.

Mr. Clark: May I proceed?

Trial Examiner Lindsay: Yes, you may proceed.

Mr. Clark: I don't think there was a question before the Court. I started to go back and develop it another way.

Q. Mr. Prior, you were at Bakersfield on the morning of November 18th, weren't you?

A. I believe I was. I believe I left here the night before and stayed all night at Bakersfield.

Q. And someone got in touch with you down there telling you that certain things had happened at the Boswell plant up here at Corcoran, on that morning, isn't that true?

A. At about 6:00 o'clock that evening, yes.

(Testimony of E. F. Prior.)

Q. I think you said it was the head or representative of some teamsters' organization, didn't you? A. I did not.

Q. Who was it? It was someone of the Union?

A. (Pause.)

Q. Tell me who it was?

A. Can I have the date you are referring to?

Q. November 18th. A. No.

Q. Who was it that told you about the happening up here at Corcoran?

A. Mr. R. K. Martin and Mr. O. L. Farr. [418]

Q. And what did they do? Telephone you?

A. No, they told me in person.

Q. Well, now, let us go back and see if we can't find out about that.

I understand from your testimony that on November 18th you were down in Bakersfield?

A. Yes.

Q. When these things occurred, if they did occur; is that true? A. Yes.

Q. All right.

Now, how, in what manner did you hear about the events of November 18th at the Boswell plant? By telephone or conversation?

A. By direct conversation with Mr. R. K. Martin and Mr. O. L. Farr.

Q. All right.

Had you been notified of anything happening at the Boswell plant while you were down in Bakersfield?

(Testimony of E. F. Prior.)

A. Not until Mr. Martin and Mr. Farr contacted me.

Q. Well, how did they contact you?

A. In person.

Q. Did they come down there? A. Yes, sir.

Q. All right. [419]

What time of day was that?

A. Approximately 6:00 o'clock in the evening.

Q. I see.

So that you had nothing at all to do with Mr. Farr having called Mr. Robinson on the telephone after he, Farr, had reached his home during the morning of the 18th; is that so?

A. That is right.

Q. All right.

The first time you saw any of the Company officials, that is, either Mr. Gordon Hammond or Mr. Louis Robinson, was on the following morning, the 19th, at the occasion you have already partly described for us, isn't that right? A. Yes.

Q. Now, I think you said that the purpose of your visit was to ascertain the status of these Union members, including Mr. Farr and Mr. Martin, and so forth, is that right? A. Yes.

Q. When Mr. Farr and Mr. Martin reported to you down in Bakersfield on the evening before, what had happened that morning, namely, November 18th, didn't they tell you that Mr. Robinson when this whole crowd had gone over to his office, had told them all that they were too excited, and to go

(Testimony of E. F. Prior.)

back to their work and cool down, and he would straighten the whole thing out later?

Mr. Mouritsen: Objected to as already asked and answered [420] twice.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

Read that again, Mr. Reporter?

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Reframe the question so that I understand it.

Mr. Clark: Very well.

Q. Now, Mr. Prior, when Mr. Farr and Mr. Martin met you at Bakersfield on the evening of November 18th, did they tell you that when the crowd had all gone over to the superintendent's office that morning, that Mr. Louis Robinson had told them all that they were excited, and to go back to their work and cool down, and that he would straighten out the entire matter?

Mr. Mouritsen: Objected to—

Mr. Clark (Interrupting): Or words to that general effect.

Mr. Mouritsen: Objected to as vague and indefinite, and untelligible.

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: I think that question covers what [421] I have requested.

You may answer.

The Witness: Mr. Martin and Mr. Farr reported that they had been escorted to Mr. Robinson's office.

Mr. Clark: I ask that go out.

Trial Examiner Lindsay: Yes.

Read the question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: They told me that Mr. Robinson had told them all to go back to their machines and that he would come out and straighten the matter out.

Mr. Clark: All right.

Q. Now, did they also tell you that they had gone back to their machines? A. Yes.

Q. And then did they tell you that certain employees had again interfered with them?

A. Yes.

Q. And then did they tell you that they had gone back and reported that to Mr. Robinson, or that they hadn't reported it to him? Which?

A. They told me they called Mr. Robinson.

Q. No, no. I mean before they left the plant?

A. They told me that they had telephoned Mr. Robinson. [422]

Q. I mean before they left the plant.

I mean, did they say that they had reported to Mr. Robinson what these other employees had done?

(Testimony of E. F. Prior.)

A. No, sir.

Q. Did they make any statement to you at all in that regard? A. No.

Q. Then, do I understand that—

Mr. Mouritsen (Interrupting): Just a minute. I submit, Mr. Examiner, that the question is too indefinite in that it is unfair, and I move that the answer go out.

Mr. Clark: I will submit that.

Trial Examiner Lindsay: The answer may stand, but after the answer is—this is not a matter of ruling—after the witness has answered the question, sometimes in some cases two or three times, it isn't necessary to summarize the testimony again. Just proceed with the questions.

Mr. Clark: May I have the last question and answer, please?

Trial Examiner Lindsay: Yes. Read the question and answer.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I will withdraw the last.

Q. On the following morning, November 19th, did you ask Mr. Robinson, that is the plant manager, if he couldn't have the [423] men tear down some stacks of cake and have your Union men re-stack it in order to give them something to do?

A. I—this conversation was had with Mr. Robinson in regard to that.

(Testimony of E. F. Prior.)

Q. Well, in the presence of these other people, I take it?

A. In the presence of all those people.

I tried to—or, I told Mr. Robinson that often these misunderstandings led to greater proportions and quite often became serious, and that it would possibly be better for the Company, better for the employees and everyone concerned, even if it were necessary for a few days to place a number of the employees to moving stacks from one pile to the other, and then carry them back where they came from, rather than to let a situation of that kind become large and a lot of misunderstandings and hard feelings and develop into serious proportions.

Q. What did you mean by your use of the term “misunderstanding”? What misunderstanding was there?

A. To the best of my knowledge, the employees and the management had a misunderstanding in regard to the membership of the men that they had evicted the previous day.

Q. Well, do you mean that they were wrong in supposing that these men belonged to your Union? Is that what you mean? A. No.

Q. Well, do you mean, Mr. Witness, that the Boswell Company [424] had misunderstood its duties under the law?

A. I don't think that I had much misunderstanding on it, but I was trying to exercise at least a portion of diplomacy and to try to smooth out

(Testimony of E. F. Prior.)

a situation that appeared to be as though it might become serious.

Q. Well, might I ask you what you meant in your statement to Mr. Robinson on that occasion by the situation becoming more serious; that is, serious enough to warrant his taking back some men to do a needless thing, such as tearing down stacks of cake and re-stacking them?

A. I did not tell Mr. Robinson, or really, in fact, did not suggest that Mr. Robinson do that. I simply made it as an illustration in the conversation to put across a point that it would be best to avoid any further controversy, even if that step might be necessary. It was a general part of the conversation. It was more or less general, and as I stated before, I was trying to exercise as much diplomacy as it was my ability to do to get these men back on the job and in their regular status, and to have no more friction or trouble than it was absolutely necessary to have.

Q. My question was, Mr. Prior, what did you mean by stating that possibly this situation might become more serious than it was, or I think you used the term "become greater" or "general"? What do you mean by that?

A. I meant that it might become necessary if these men were [425] not placed back on the payroll and that their rights as employees and citizens were not protected, that we would have to appeal and file charges with the National Labor Relations

(Testimony of E. F. Prior.)

Board and appeal to our organizations, with which we are affiliated within the labor movement, to help prosecute a boycott against the Boswell Company. [426]

Q. You had already filed charges before the National Labor Relations Board, hadn't you?

A. I had——

Mr. Mouritsen (Interrupting): Objected to as vague and indefinite. What charges?

Mr. Clark: Submitted. On July 17th. I am talking about that.

Trial Examiner Lindsay: He may answer.

The Witness: No, the charge on July 17th was withdrawn.

Q. (By Mr. Clark): When was it withdrawn?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: May I have the exhibits?

(The exhibits referred to were passed to Mr. Clark.)

Mr. Clark: Was there a ruling, your Honor?

Trial Examiner Lindsay: He may answer. If he knows, he may answer.

Q. (By Mr. Clark): When was it withdrawn?

A. In the early part of September, as I recall.

Q. And what was the occasion for this withdrawal?

A. It appeared, or we felt that the alleged violation was no longer being practiced and that it was

(Testimony of E. F. Prior.)

no longer necessary to go ahead and press the charge.

Q. What was the alleged violation? [427]

A. The alleged violation was an 8(1) violation.

Q. Please tell us that in your own words.

Mr. Mouritsen. This is objected to as immaterial. What possible bearing does the filing and withdrawing of a former charge have upon this matter which is an entirely different matter and happened subsequent to the filing and the withdrawing of the former charges?

Trial Examiner Lindsay: Sustained.

Mr. Clark: Very well.

Q. As a matter of fact, prior to November 18th you had been told by Mr. Hammond, that is, Mr. Gordon Hammond, Mr. Prior, that it was no concern of the company whether its men joined or didn't join your union, isn't that right?

A. Oh, yes; every management tells me that.

Q. That is true in this case, isn't it?

A. Yes.

Q. And by November 18th, or at least September, when you withdrew this charge, you had come to a decision that that was the truth in this case, isn't that right?

A. The charge was withdrawn just shortly after the four men, Mr. George Andrade, Mr. R. K. Martin, Mr. O. L. Farr, and, I believe, I am correct in that, I am trying to place that time, and Mr. Boyd Ely had been placed right back on the job.

(Testimony of E. F. Prior.)

Mr. Mouritsen: May I have that question again to which the answer applies? [428]

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: May I proceed?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark): Now, in that connection, leaving the conversation of November 19th for a moment, subsequent to that time did you have anything to do with causing there to be placed on the bulletin board or on the company property a notice, an approval by Mr. Larson, one of the field men for the National Labor Relations Board, Twenty-First District I believe, identical with that which has been marked Respondent Boswell's Exhibit 2 for identification, I think?

A. (Examining document): Mr. Larson gave me a copy of this, or similar to it. It seems to me there was a date on it.

Q. Do you remember when that was?

A. On or about November 23, I believe, of 1938.

Q. Yes.

And Mr. Larson had been sent down at your request, hadn't he, or through the filing of a charge by you with the Board to investigate the situation at the Boswell plant? A. Yes.

Q. And as a result of his conferences with the Boswell Company at the plant here he reported to

(Testimony of E. F. Prior.)

you, did he not, that [429] a notice identical with the text of the exhibit I have shown you had been posted on the company property for employers to read?

A. I would say very similar to this text. I don't know.

Q. Yes.

Did you ever yourself happen to see that notice that was posted there, the original notice?

A. Posted on the Board?

Q. On the property? A. No, I did not.

Q. Mr. Larson told you that it had been posted, though, didn't he? A. No.

Q. Did he tell you it would be posted?

A. He told me that they had stated that they would post it.

Q. All right.

Did any of your members report back to you that they had seen it on the property?

A. No, they haven't.

Q. Did you ever make any effort yourself to check up as to whether or not such notice was in fact posted on the company's property subsequent to November 18th for a period of about two weeks?

A. I talked to Mr. Robinson about the notice. [430]

Q. What did you ascertain from him?

A. Mr. Robinson stated that this notice had been placed on the bulletin board in the office. We had some little disagreement on that, and that my under-

(Testimony of E. F. Prior.)

standing was that the notice was to be placed in all departments in the plant and Mr. Robinson stated that that was not his understanding from Mr. Larson, that if it were placed in the office bulletin board that that would cover it.

Q. I see.

A. I stated that they had had it up there for the required period of time.

Q. All right.

Which was two weeks, wasn't it?

A. I think it was.

Q. All right.

A. I am not positive on that now.

Q. All right.

Now, following that up, I mean subsequent to that, you of course had another meeting with Mr. Robinson concerning the subject matter of this notice which is marked respondent Boswell's Exhibit 2 for identification, didn't you, that is, the right of the employees to join the union if they wanted to, and in that connection I direct your attention to respondent Boswell's Exhibit 3.

A. (Examining exhibits): Yes, I inserted this ad myself. [431]

Q. I see.

Now, that ad, as shown by the exhibit number, was inserted on January 20th. Is that the date you recollect it was published?

A. Whatever the date of the——

Trial Examiner Lindsay (Interrupting): The newspaper speaks for itself.

(Testimony of E. F. Prior.)

Mr. Clark: Very well, just so long as that——

The Witness (Interrupting): I recall the ad.

Mr. Clark: Yes.

As a matter of fact the newspaper isn't a part of the exhibit, your Honor. We have confined it only to the ad, you will remember.

Trial Examiner Lindsay: Plus the date of the page.

Mr. Clark: All right, the date of the page as a part of the exhibit answers that.

Q. You, of course, believed the statements made in that advertisement were true at the time you made them? A. No.

Q. Oh, you didn't? A. No.

Q. In other words, you published the matters which appear over your name on that advertisement believing them to be untrue?

A. I placed this in here in quotations. [432]

Q. You didn't believe them then to be true at all?

A. I did not.

Q. I notice that the language, reading as follows: "After the declaration of company policy by Mr. Robinson, no employee of the company should be afraid to attend a meeting for the purpose of learning the history and gains made by organization in their industry—they really owe it to themselves to learn everything possible about these new developments," is not in quotations. You intended that to be a statement by you, didn't you? A. I did.

Q. And as to everything else in this advertise-

(Testimony of E. F. Prior.)

ment, which is not included in the quotations, you are vouching for that, aren't you?

A. With the exception of possibly some of the spelling.

Q. Some of the what?

A. Some of the spelling.

Trial Examiner Lindsay: Some of the spelling.

Mr. Clark: I see.

Well, I guess the newspaper can spell.

We offer, your Honor, this Exhibit 2 for identification in evidence.

Mr. Mouritsen: I object to the offer upon the ground that no foundation has been laid.

Mr. Clark: Submitted. [433]

Mr. Mouritsen: It has never been indicated by anyone. The witness has never seen the notice posted and he is not even sure that it is an exact copy of the notice posted if it was posted.

Mr. Clark: He said he checked up on it.

Trial Examiner Lindsay: Now, wait a minute. Now, just for the time being, this may be off the record, and if you want it on later, I will put it on.

(Discussion outside the record.)

Mr. Clark: I will withdraw the offer.

Does your Honor intend to take a recess at this time? It is 4:30.

Trial Examiner Lindsay: Yes. The hearing will be adjourned until 9:30 in the morning.

(Thereupon, at 4:30 o'clock p. m., an adjournment was taken until 9:30 o'clock a. m., Tuesday, May 23, 1939.) [434]

American Legion Hall,
Corcoran, California,
Tuesday, May 23, 1939. [435]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The Respondents are ready.

Mr. Mouritsen: Ready for the Board.

Mr. Clark: May I proceed?

Trial Examiner Lindsay: Yes.

E. F. PRIOR,

the witness on the stand at the time of adjournment, resumed the stand and was further examined and testified as follows:

Cross Examination

(Continued)

Q. By Mr. Clark: Mr. Prior, did you bring with you the amended copy, or rather a copy of the amended constitution and by-laws of the American Federation of Labor as of 1938?

A. I don't have that as yet. I meant to pick it up on Long Beach when I went down over the weekend, but I forgot it. I will get one from either one of the later Locals up here in the Valley, or from the Fresno Central Labor Council.

Trial Examiner Lindsay: You will try to have it here sometime this week or the next week?

The Witness: Yes.

Q. By Mr. Clark: At any rate, before the hearing closes you will furnish us with that so it may go

(Testimony of E. F. Prior.)

in as Board's Exhibit 6, I believe is the number reserved for that.

In that connection, Mr. Prior, can you tell us what if any requirement is contained in the constitution and by-laws of the [437] American Federation of Labor, either as they are admitted in evidence or as amended, so far as a quorum of Union membership necessary to authorize picketing is concerned?

A. There is nothing stated in any of the constitutions or by-laws of the American Federation of Labor as to that.

Q. In that regard? A. Yes.

Q. What is the practice or rule concerning that?

A. That is left strictly to the local autonomy of all Local Unions and practically all Locals of all International Unions affiliated with the American Federation of Labor.

Q. I see.

In the case of this particular Local, what is the rule or custom which has been adopted with respect to the number of members necessary to constitute a quorum where you are to pass a strike sanction or authorize a boycott or picketing?

Mr. Mouritsen: Objected to as immaterial.

Mr. Clark: Submit it.

The articles and by-laws went in, may it please your Honor, with respect to this particular rule or matter which concerns the governing of the Union that is not included in the by-laws, but there is a

(Testimony of E. F. Prior.)

practice of leaving it to the autonomy of the particular Local, and I am asking what rule, if any, in that regard has been adopted by this Local.

Trial Examiner Lindsay: He may answer. [438]

The Witness: There had been no, or has been no definite rule set up in regard to that matter by the Local pertaining to picketing. In fact, I don't know of any Local Union that has any rule in its constitution or by-laws designating the number of pickets to be used in picketing.

Q. By Mr. Clark: No, of members to constitute a quorum at such meeting, that is what I am after.

A. We have no picketing meetings. I don't believe I understand.

Q. In your direct testimony, you testified, I think, Mr. Prior, that on a certain date in January a meeting was held by the members of this particular Local Union involved in this case at which it was decided to inaugurate picketing against the Boswell Company.

Do you remember that testimony?

A. Yes, I remember that testimony.

Q. All right.

Now, I am asking you what rule, if any, of your Local Union there is pertaining to a quorum of members necessary to authorize or pass a resolution authorizing picketing?

A. Those matters are just taken care of, the same as any other routine business of the organization. It is just picketing and the handling of strike and

(Testimony of E. F. Prior.)

the passing on agreements, and those things is just a routine business of an organization. They have no set rules on—the only rule that they have in [439] any Local Union is the rule in calling a strike, and most Local Unions do have a rule pertaining to the actual calling of strike. [440]

Q. Well now, had a strike been called by this local against Boswell? A. No.

Q. The picketing has been authorized, though?

A. Yes, sir.

Q. Now, is there any rule or custom in use in this particular local with respect to the percentage of its members who must be present at any meeting at which business is done, and I am inquiring specifically about picketing?

A. No, there is nothing in regard to picketing.

Q. Well, is there any requirement so far as any meeting is concerned as to the number of members which must be present to constitute a valid meeting?

A. To the best of my knowledge this local has not passed any motion or adopted any resolution setting up what shall constitute a quorum.

Q. Has it followed any practice in that regard?

A. Not to my knowledge.

Q. Now, directing your attention for a moment again to the meeting on the morning of November 19th in Mr. Louis Robinson's office at the Boswell plant, I will ask you what reply, if any, Mr. Robinson made to your reference, we will call it, to unstacking and restacking cake in order to provide em-

(Testimony of E. F. Prior.)

ployment for men during a situation such as that which was presented at this particular company. [441]

A. I really don't recall what Mr. Robinson's response was other than that there was a tense feeling on the part of the employees still working and that he felt that it was a situation that should be handled with the utmost care and that he didn't want to take any action without giving it very careful consideration and bring these employees back and possibly cause a further flare-up in the plant.

Q. Now, will you see if you can't answer the question which I put to you directly, Mr. Prior. And this is no criticism of your attempts in that regard.

On your direct examination you made some reference to your having suggested that the men be used to tear down stacks of cakes and restacking them. Do you remember that reference? That is all I want.

Trial Examiner Lindsay: That testimony was brought out on cross examination.

Mr. Clark: I mean on cross examination. I am incorrect in stating it was direct examination. It was on your cross examination.

The Witness: On cross examination I did say that.

Q. By Mr. Clark: You have that statement of yours in mind, haven't you? A. Yes, sir.

Q. The thing I want is what direct response, if any, Mr. Louis Robinson made to that suggestion by you. [442]

(Testimony of E. F. Prior.)

A. The only thing I could give you would be my conclusion.

Q. I don't want your conclusion. I would like what statement he made, if any, and if he didn't make one, tell us so.

A. Well, directly to that statement I would say that he made no statement.

Q. I see.

Now, is the best answer, then, that you can give us in that regard the one previously given? Namely, that Mr. Robinson's statement to you was that the situation was very tense so far as the other employees were concerned, and in effect that he wanted to feel his way along in it? A. Yes.

Q. All right.

What, if anything, further did Mr. Robinson say at this meeting of November 19th so far as the status of the members of your Union was concerned, at the plant?

A. May I have that question again?

Mr. Clark: May I have the question read?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: I will object to the question on the ground it is vague and indefinite.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: Do you understand the question? [443]

(Testimony of E. F. Prior.)

The Witness: I believe I do.

Trial Examiner Lindsay: You may answer.

Mr. Mouritsen: I withdraw the objection.

The Witness: Could I have that again, please?

Mr. Clark: Well, I will see if I can't reframe it, because possibly the witness doesn't have it all in mind.

Trial Examiner Lindsay: Can't we have our questions a little shorter?

Mr. Clark: I will try, your Honor, but it is rather difficult.

Q. The purpose, as I understand it, of the meeting of November 19th, so far as you were concerned, was to ascertain the status of your people at the Boswell plant, isn't that true? A. Yes.

Q. Will you please tell us what, if anything, Mr. Robinson said in that regard, in addition to what you have already told us in your cross examination?

Mr. Mouritsen: I will object to the question on the ground it is vague and indefinite.

Mr. Clark: I will withdraw it and ask him again, what, if anything, Mr. Robinson said about it?

The Witness: As nearly as I recall—I am not positive if I testified to this previously——

Q. By Mr. Clark: Let us have it all again, so long as there is some doubt about it. [444]

A. Mr. Robinson stated that he and Mr. Gordon Hammond would feel out the sentiment of the men, to which I asked Mr. Robinson if we were dealing with the management of the J. G. Boswell Company,

(Testimony of E. F. Prior.)

or if we were expected to deal with the employees, that in all previous cases with other companies we had been accustomed to deal with the management, but if there was a different policy here, if he would call the employees together that we would take the matter up with them, to which Mr. Robinson replied, he said, "Well, I will have to discuss it, or feel out the sentiment of the employees."

Q. Was it in that connection that he stated that the situation there at the plant was rather tense, as I think you have said earlier this morning?

A. Of course, it is difficult to repeat verbatim all of the conversations that go on in these conferences. I think the conference lasted around an hour or an hour and a half, and in relation to the stacking and re-stacking of the meal, it was something that was along the general conversation that I was simply making in an attempt to put across a point; and I assumed that Mr. Robinson's reply was one intended not to be a direct commitment on his part, and at the same time expressing that he wanted time to talk to the men and probably adjust themselves to any condition that might be coming up in the future.

Q. You understood that Mr. Robinson wanted to smooth out this [445] entire thing, didn't you?

A. I didn't have that feeling.

Q. Well, didn't he, in effect, say that that was what he wanted to do?

A. He so stated.

Q. Yes.

There had been a meeting, Mr. Prior, between you

(Testimony of E. F. Prior.)

and Mr. Martin and Mr. Spear and Mr. Farr on the one side, and Mr. Gordon Hammond on the other, on the morning of November 17th at the Boswell plant, hadn't there? A. Yes.

Q. And am I correct in stating that the meeting on the morning of November 17th, to which I have just referred, was the result of a prior meeting of members of your Union off the Company property, to-wit: On the preceding night, at which a committee was appointed to take up certain matters with the Company officials? A. (Pause.)

Q. Will you please answer?

A. Yes, that is correct.

Q. Now, will you please tell us what the object or purpose of the meeting of November 17th was, that is, the meeting held on the morning of November 17th at the Company plant, at which you and Messrs. Martin, Spear and Farr represented this Local Union? [446]

A. Yes. The purpose of that meeting was to discuss with the representatives of the company the possibility of reducing the hours from 12 hours per day, and in some instance longer, to an 8-hour day and in that way create more employment, employment for a larger number of employees, and at least prevent the laying off of any more men than it was absolutely necessary to lay off.

Q. Yes.

A. And further to bring to the attention of the management that a number of the members had re-

(Testimony of E. F. Prior.)

ported, and the allegation was being made, that certain of the supervisory employees in the plant were intimidating the prospective members of the union.

Q. All right.

Now, let us lay the latter part of your answer to one side for a moment and we will come to that in order. The first thing that I would like to direct your attention to is the matter of spreading out the work among more employees by your attempt to reduce the hours of work.

Now, am I correct in stating that the occasion for this committee consulting the company officials in that regard was that the company was then laying off certain men and about to close down one or more of the gins? A. Yes, that is correct.

Q. In other words, to put it bluntly, Mr. Prior, the work [447] looked as though, if it continued, if the number of hours then worked were continued, that—withdraw all that.

In other words, Mr. Prior, the work looked as though it was about to run out, isn't that so, if they continued to work the number of hours which had been worked in the past?

Mr. Mouritsen: Objected to unless the witness knows.

Mr. Clark: If he knows, actually, certainly.

The Witness: Could I have that question again? There is one word that is not quite clear.

(The record referred to was read by the reporter, as set forth above.)

(Testimony of E. F. Prior.)

The Witness: It had that appearance to us at that time.

Q. By Mr. Clark: Yes.

Now, earlier in the fall, that is, about October 8th, after the mill had been shut down and some of your union members, among others, had been laid off, you had had a meeting with Mr. Gordon Hammond with respect to having the men put back to work, and the result of that had been that your four union men within a few days were put back on, isn't that so?

Mr. Mouritsen: Now, I object to that, Mr. Examiner; it is obviously——

Trial Examiner Lindsay (Interrupting): I am going to sustain the objection to that question.

Mr. Clark: May I ask your Honor to indicate the ground [448] upon which the objection is sustained?

Trial Examiner Lindsay: Well, it isn't necessary for me to give my reasons. Your questions are—(Pause)—you may reframe the question.

Mr. Clark: May I have it read back?

(The question referred to was read by the reporter, as set forth above.)

Mr. Clark: It is perfectly clear, your Honor. It is not compound or complex.

Trial Examiner Lindsay: Mr. Clark. Will you please stop arguing with me about these matters? Now I have kindly requested that the question be reframed. Now as I understand the testimony a lot

(Testimony of E. F. Prior.)

of the things in there, in your question, have not been touched upon as yet. It is not fair to a witness.

Mr. Clark: The whole thing is indirect examination and I am trying to sum it up and to direct his attention to a certain situation. I can take half an hour to develop it so far as that is concerned.

Trial Examiner Lindsay: My request is that you frame your questions so that they are fully understandable. That is all the request that I am making and I am not sustaining the objection for any other reason.

You may reframe your question.

Mr. Clark: I think I will leave that question just where [449] it is in the record.

Trial Examiner Lindsay: You may have the privilege of reframing it.

Mr. Clark: And go to another subject matter.

Q. At the meeting on the morning of November 17th did you make any suggestion or proposition to Mr. Gordon Hammond with respect to reducing the hours so as to stretch out or spread out the employment? A. I asked Mr. Gordon Hammond——

Q. (Interrupting): Will you please answer yes or no so we can have a clear record on it?

A. Could I have the question again, please?

(The record referred to was read by the reporter, as set forth above.)

The Witness: I would say that I made a suggestion, yes. [450]

Q. Will you please state what that was?

(Testimony of E. F. Prior.)

A. I asked Mr. Gordon Hammond if it was not possible to reduce the hours from 12 hours a day to probably 8 hours, and pointed out that in all the rest of the oil mills in the San Joaquin Valley they were working an eight-hour day, and along in the discussion I jointed out that we had met similar situations in other plants and even it had been agreed to, in some instances, one particular plant in the South, where—among the employees working there and the management—that each man had worked three days a week so that they would all have at least a part of a loaf rather than a few having all of the loaf and the others going hungry.

Q. All right.

Now, you stated all that to Mr. Gordon Hammond?

A. Yes.

Q. What was the name of the plant in the South you have just referred to where that was done?

A. The Copra Oil Mill Company in Wilmington.

Q. And what other plants did you have in mind in stating to Mr. Hammond that similar arrangements had been made in other cotton gins or the cotton seed mills?

A. I think that I told Mr. Hammond that the San Joaquin Cotton Oil Company, both at Bakersfield and at Chowchilla had, during the shut-down period last year, rotated the work among all of the employees that were not successful in getting [451] full time employment elsewhere.

Q. I see.

(Testimony of E. F. Prior.)

In connection with the firm you last mentioned, Mr. Prior, will you please state whether or not you are familiar with the extent of its operations with respect to the number of months during the year that the gins or mills run?

Mr. Mouritsen: I object to that as incompetent, irrelevant and immaterial, and not tending to prove or disprove the issues of the case.

Mr. Clark: I think it has a direct bearing on it, your Honor.

Trial Examiner Lindsay: He may answer the question, if he knows.

The Witness: It is considered to be an average season, crushing cotton seed of from six to seven months, so the employees have told me, and the management, since the Fall of 1937.

Mr. Clark: Yes.

Q. But here is specifically what I am after.

Do I understand that you have contacted the management of the Bakersfield firm you have just mentioned on behalf of another Local Union of cotton gin workers?

Mr. Mouritsen: Objected to as immaterial.

Trial Examiner Lindsay: Sustained.

Mr. Clark: It is preliminary. [452]

Trial Examiner Lindsay: Sustained.

Q. By Mr. Clark: Well, do you know, Mr. Prior, whether or not in the case of the Bakersfield firm which you mentioned to Mr. Hammond there was any time during the season of 1937 to 1938 that

(Testimony of E. F. Prior.)

the entire operations was closed down, and no men were employed?

A. No, I do not—beg pardon—could I have that?

(The record referred to was read by the reporter, as set forth above.)

The Witness: Yes, I do know that.

Q. By Mr. Clark: That that was true of that time, isn't that true? A. It was not true.

Q. That is was not true?

A. I know the answer.

Q. Well, let us have the answer.

A. At the same time it is not true. There was no time during the Summer of 1938 that the entire crew was laid off in the Bakersfield plant, the Bakersfield San Joaquin Cotton Oil plant.

Q. All right.

Now, was there a time, though, during the year 1937, that is from September, 1937, to the summer of 1938, when only a skeleton crew was maintained at the Bakersfield plant?

Mr. Mouritsen: This is objected to as immaterial. [453]

Trial Examiner Lindsay: Well—

Mr. Clark: I will have to develop it by the people from that firm. I am asking only for this gentleman's knowledge. I think he said—

Trial Examiner Lindsay (Interrupting): Mr. Clark, just—

Mr. Clark (Interrupting): Please, Mr. Exam-

(Testimony of E. F. Prior.)

iner, let me complete my statement for the record. I have that right, at least.

Trial Examiner Lindsay: All right, if you have a reason for stating your reasons for asking the question, but we are not trying the Bakersfield company, and it is not material in this issue.

Now, let us proceed in an orderly manner, and if you wish to make a statement for the record, after I have sustained an objection, just kindly ask that the objection be stricken on the record, that you would like to make a statement, but before I finish making my statement you start interrupting me. Now, let us understand one other thing, that I am not going to have that done any more. By that I mean that you have a perfect right to make any statement that you think is material to this issue for the record, and if you conduct yourself as an attorney would in most of the courts, and kindly ask that you hadn't had a chance to make your statement, and ask that you now have that opportunity, it will always be granted. No attorney has a right to constantly cut off remarks that are being attempted [454] to be made, at least by the judge in charge.

Now, let it be fully understood that there is only one person who is conducting this hearing. At different times, I have kindly requested that you re-frame the question, and you have stood on your question. The question may, in your mind, be clear to you, but it may not be clear to me, and I believe I have a right to ask my attorney to re-frame his question at any

(Testimony of E. F. Prior.)

time. I do not intend to take any sarcastic remarks from anyone.

Now, if you have a statement to make, Mr. Clark, you may get up and make it.

Mr. Clark: Very well.

I simply wish to find out, your Honor, that in this witness's cross examination, in answer to a question just put to him, he has stated, as I understand it, that on the morning of November 17th he called Mr. Gordon Hammond's attention to certain other firms or operations in which or with respect to which he had prevailed upon the management to reduce hours and stretch out the work, and I think in that connection he specifically referred to one firm in Los Angeles, and also to this firm in Bakersfield.

Now the purpose of my question is solely to point out and to establish, if I can, through this witness, that those operations to which he referred and which he used as an illustration in his talk with Mr. Hammond were totally different than the one [455] conducted by the Boswell Company at Corcoran, and with respect to which he was then suggesting to Mr. Hammond that the same thing be done and the work spread out even to the point, as, I think he said in the case of the Los Angeles firm, of the men being reduced to three days' work a week.

Now, if this witness does not know the facts concerning those other operations, that is, the one at Bakersfield, with respect to whether they were year-round operations or only seasonal, why, of course,

(Testimony of E. F. Prior.)

he can't testify to it. [456]

Trial Examiner Lindsay: Yes.

Mr. Clark: It was only my purpose to elicit his knowledge if I could in that regard, in view of the fact that he had actually contacted them and presumably knew something of the type of the operations so as to relieve me from the necessity, if I think it material later on, to submit the evidence to your Honor's ruling, of getting people up from those places to describe their operations.

That was my sole purpose. I didn't intend any disrespect to you Honor at all by it.

Trial Examiner Lindsay: Well, my reason for my statement was some of the things that you did here yesterday and some of the things you snapped at me yesterday on, and I just merely don't want that done. These are United States Government hearings and they are on a par with any Federal Court. All I want attorneys to do is to conduct themselves just as they would in the Federal Court. We owe that to the United States Government and that is my only purpose. I just can't have that thing being done by anyone.

Do you understand that last question?

The Witness: I understand what the attorney is trying to get, the information that he wants.

Trial Examiner Lindsay: Well, you may answer. I will permit you to answer.

Mr. Mouritsen: It is understood this is over my objection, Mr. Examiner?

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: Yes.

The Witness: Would you please read the question again?

(The record referred to was read by the reporter, as set forth above.)

Q. By Mr. Clark: If you know, Mr. Witness.

A. The oil mill at the Bakersfield plant when the seed had been—the supply of seed had been exhausted from their storage space of seed, the oil extraction process of the oil mill at Bakersfield ceased, and it has been a practice that there is certain wear and repairs and quite often replacement with a certain amount of new machinery that they keep a crew on throughout the entire shut-down period.

Q. For the purpose of repairing this machinery?

A. Yes.

Mr. Mouritsen: Now, Mr. Examiner, I move to strike the answer on the ground that it is totally unrelated to these issues. If the purpose is impeachment, which I assume it is, it is impeachment on a very collateral issue that can have no possible bearing on this case. If the witness made such a statement to the management, if he was honestly mistaken, if the facts should prove contrary to his statement, it would still be impeachment on a collateral issue that can have no bearing on this case.

In several instances, and also yesterday, counsel has [458] been given great lee-way in going into matters with the witness, and it will prolong the hearing indefinitely; and I submit that the position of the

(Testimony of E. F. Prior.)

Board in this matter is that we should confine ourselves to the issue in this matter in order that the facts may be developed expeditiously and as soon as possible in order that the hearing won't be dragged on for several months.

Mr. Clark: It is not intended as impeachment, Mr. Examiner, at all. I am simply trying to ascertain the facts concerning these other firms which were used as examples by Mr. Prior in his discussion with Mr. Gordon Hammond so as to establish clearly in this record the reason for the uprising, if we can call it that, of the other 90 odd percent of the employees on the following morning. That is the purpose of it.

Trial Examiner Lindsay: Well now, the thing that I particularly think is objectionable is that I am constantly met with your testimony in your questions and in your statements. Now, I only want the testimony from the witnesses who come up here and take an oath whenever they testify. Now, I don't know whether there were 90 percent, 60 percent, 80 percent, or 40 percent. There is nothing in the record as yet of any percentage of any employees, and I will disregard that statement as to the 90 percent.

Now, the only testimony that we are interested in is the [459] facts from witnesses who come up here and testify. Now, I think you have gone into that question far enough, Mr. Attorney, the situation with those other companies. I have permitted you to develop that. The last answer, I believe, clears it.

(Testimony of E. F. Prior.)

You may proceed.

Mr. Clark: The objection is overruled? The answer was in, Mr. Examiner, you see, and Mr. Counsel made the objection afterwards.

Trial Examiner Lindsay: Yes.

Mr. Clark: I will abandon that from this point on.

Q. At the time you talked to Mr. Hammond on the morning of the 17th in the presence of these other gentlemen whom you have named you, of course, knew that—withdraw that.

What response, if any, did Mr. Hammond make to your suggestion?

A. Mr. Hammond said that he would give the matter consideration and see if he couldn't work something out.

Q. Did he say anything to you at that time, Mr. Prior, with respect to starting only two of the gins on the following morning at 6:00 o'clock?

A. I don't recall that he did.

Q. Did he say anything to you on that occasion, namely, the morning of November 17th, with respect to starting two of the gins later on the following morning, namely, at 10:00 [460] o'clock?

A. There was something said in regard—by Mr. Hammond in regard to how he might work it out, but not in the words that you put it.

Q. All right.

Will you please give us what he said in that regard and in this connection you will understand, Mr.

(Testimony of E. F. Prior.)

Prior, that all I am after is the substance of these conversations. I don't expect you to remember them verbatim. Neither does his Honor nor anyone here. Give us as near as you can remember then the substance of what was said in connection with the subject you last mentioned.

A. Mr. Hammond did state that they were having to shut down one or two of the gins; the cotton was not coming in quite so fast now as it had previously, and that he might, by reducing the hours, be able to work out some program, possibly staggering the hours, and spread the employment out.

He was giving the matter consideration and, as we understood it, trying to formulate some plan that might work.

Q. Yes.

Now, did he—withdraw that.

Was he more specific with you on that morning, namely, November 17th, than you have just stated? And by that I mean did he indicate any starting times for the following morning with respect to any number of the gins or any closing times? [461]

A. I don't recall that he did.

Q. But you do recall that he discussed that subject generally, is that right?

A. Yes, it was discussed generally.

Q. Did you make any counter suggestions to him concerning what might be done in that regard?

A. No, other than the suggestions that I previously mentioned, simply pointing out how the problems

(Testimony of E. F. Prior.)

had been met by the management and the employees and that they had worked satisfactorily.

Q. I see.

In pointing out these other examples to Mr. Hammond, did you specifically call his attention to the situation of the company which had reduced the work to three days a week for all of its employees instead of keeping on a fewer number?

Mr. Mouritsen: I object to this, Mr. Examiner. This is the second or third time that this same ground has been covered. We are simply wasting time.

Mr. Clark: No. I am sure it isn't the third; and I am trying to find out whether he specifically called——

Trial Examiner Lindsay (Interrupting): You have gone into that at least twice. Proceed with the examination.

Q. By Mr. Clark: Did you call that specifically to Mr. Hammond, discussing the three days a week?

A. No, it was in the general discussion, simply pointing [462] out conditions that did exist at other places and the result of those conditions.

Q. Did he say anything to you during that conversation with respect to the policy of the Boswell Company—withdraw that.

Was that subject matter, then, Mr. Prior, left just as you described it to us, namely, that Mr. Hammond was going to try to work something out?

A. Yes.

Q. All right.

(Testimony of E. F. Prior.)

Now, prior to the morning of November 17th, two of the members of your union had been laid off, hadn't they?

A. There had been a number of them laid off prior to November 17th, yes. The exact number I couldn't state at all.

Q. All right.

Did you discuss any of those men with Mr. Hammond on the morning of the 17th?

A. Not that I recall in relation to reinstating them, or, that is, putting them back on the job. I don't recall that we did.

Q. I see.

As I correct, then, in stating that the only other general subject which you discussed with Mr. Hammond on the morning of the 17th was the reports that certain employees were stating that the company was opposed to other employees [463] joining your union?

A. That the foreman of the company was making those statements, yes.

Q. Yes.

The thing I am after is this: Was that the only other general subject which you discussed with Mr. Hammond on the morning of the 17th, you see, beyond the one we have just exhausted?

A. As the committee understood, we had two specific subjects.

Q. Yes. What were they?

A. The matter of reducing the hours and the mat-

(Testimony of E. F. Prior.)

ter of the alleged intimidating remarks by the foreman of the company.

Q. All right.

Tell us whether we have exhausted substantially everything that was said during the conversation on the morning of November 17th respecting the reducing of the hours.

Trial Examiner Lindsay: That question to me was, did you say anything other than that at that specific meeting.

Q. By Mr. Clark: Substantially.

A. Substantially, I would say that that covered it.

Q. All right.

Let us pass on to your second main subject. And before I get there, let me ask you, Mr. Prior, whether I am correct in stating, then, that nothing was said during this conversation [464] concerning these other members of your organization who had been laid off a few days previously?

A. Outside as it was mentioned to Mr. Hammond that we knew a number of employees had been laid off and it was understood that there was probably going to be more laid off. It was pointed out to Mr. Hammond that we understood the circumstance, that their acreage was much smaller this year than it had been the preceding year, and that the tonnage handled was going to be much less than it had been the preceding year, and that all we were trying to do was, if possible, to work out some plan of coopera-

(Testimony of E. F. Prior.)

tion that would benefit both the union employees and the non-union, that we were not making any attempt at all whatsoever to discriminate against any of the employees. [465]

I remember that that discussion was had, and we always referred to it and thought of it more or less of a general conversation in discussing the specific matter, namely, the reduction in hours that we were talking about at that time.

Q. Yes.

And was that the only reference, then, made to the men who had been laid off prior to November 17th? It was just in that general connection, wasn't it?

A. Yes.

Q. All right.

Now, will you please tell us what was said with respect to the alleged discrimination against employees for joining your Union?

A. Mr. Spear told Mr. Hammond that a number of the employees had informed him that Mr. Tommy Hammond and Mr. Joe Hammond was telling them that they would lose their jobs if they joined the Union, or that the Company would shut down, and as he stated, a number of intimidating remarks, and we know, and we know that Mr. Hammond knows that that is a violation of the law; and we believed the only fair thing to do was to call it to his attention and see if something couldn't be done about it.

Generally, that was the report Mr. Spear made.

Q. Yes.

(Testimony of E. F. Prior.)

A. Mr. Hammond stated—— [466]

Q. (Interrupting): I am going to ask you that question.

What, if anything, did Mr. Hammond reply to that?

A. Mr. Hammond stated that no one was authorized to hire or fire, or had any authority other than himself, to which I interposed, then, and asked Mr. Hammond if it was not true that he gave the orders to Mr. Tommy Hammond or Mr. Joe Hammond for them to pass on to the employees in the various departments, and that he held Mr. Tommy Hammond and Mr. Joe Hammond responsible to himself for seeing that his orders were carried out. To which Mr. Hammond replied, "Yes."

Q. Now, let us see about that, Mr. Prior.

Do you mean to tell us that you asked Mr. Hammond whether he had not instructed Mr. Tommy Hammond and Joe Hammond to make these intimidating remarks of which they were accused?

A. I did not intend to infer that.

Q. No? That is what I wanted to be clear about.

A. The question had been raised on numerous occasions as to the status of Mr. Tommy Hammond and Mr. Joe Hammond.

Q. I see.

Go ahead and finish.

A. And I wanted, and I believe I so stated to Mr. Gordon Hammond, that we wanted a clarification by someone in charge as to their exact status.

(Testimony of E. F. Prior.)

whether or not they were in a position to give orders and to issue orders after the orders had been given to them by Mr. Gordon Hammond. And that was cleared up, [467] we figured.

Q. To what order did you refer? Orders pertaining to the operation of a gin, or the running of the mill? That is, things done during the mechanical operations of the plant on any given day?

A. To the operations and the direction of the men in their work.

Q. I see. All right.

Now, as I understand you, then, Mr. Prior, when you called these alleged remarks by Tommy and Joe Hammond to the attention of Mr. Gordon Hammond on the morning of November 17th, his reply was in substance that neither of them were authorized to hire or fire anybody in the company, isn't that right?

A. That is what he said.

Q. Did he say anything with respect to their not being authorized to make any such statements on behalf of this Company?

A. He stated that they were not authorized to make those statements, and that he would talk to them about it.

Q. I see.

Now, I then understand that you thereupon asked Mr. Gordon Hammond whether or not Tommy and Joe Hammond were the people who carried his orders out to the men, in effect?

A. Not after he stated that he would talk to them.

(Testimony of E. F. Prior.)

That was before that he established the fact, or rather had Mr. Gordon Hammond's statement that they were in authority as far as di- [468] recting the activities of the men in relation to their work.

Q. All right.

Now, I take it that the statement you have just referred to was made by Mr. Gordon Hammond in the way you first testified to, namely, that his affirmative answer to his question as to whether or not these men were those persons who were authorized to carry out his orders to the men——

Trial Examiner Lindsay (Interrupting): I think we have gone into that in several different ways.

Mr. Clark: I only have to go back, Mr. Examiner, and remove that last conclusion from the record, because that isn't, obviously, consistent with this gentleman's testimony with what this gentleman said concerning Mr. Tommy and Joe Hammond.

Trial Examiner Lindsay: Mr. Clark, you have your side of the case to put on, and this witness has told you several times what the conversation was between his committee and Mr. Hammond, and you have gone over that three times. Let us proceed and not go into a thing so many times.

Mr. Clark: I am apparently getting something in addition each time, your Honor, and I would like to have the conversation.

Trial Examiner Lindsay: The record doesn't show that.

Mr. Clark: May I have the last question?

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: Yes.

(The question referred to was read by the reporter, as set [470] forth above.)

Trial Examiner Lindsay: Will you kindly reframe that question?

Mr. Clark: Yes.

Trial Examiner Lindsay: I honestly can't follow that record.

Mr. Clark: I can't either the way it is down there.

Trial Examiner Lindsay: Those long questions. Proceed.

Q. By Mr. Clark: Tell us, will you please, Mr. Prior, again, then, what Gordon Hammond said so far as the authority of Tommy and Joe Hammond were concerned?

A. Well, I asked him if it was not true that he had issued orders to Mr. Tommy and to Mr. Joe Hammond and that if he did not hold down his—in substance, I can't get the same words.

Q. I understand.

A. But that if he did not hold them responsible to him for seeing that those orders were passed on to the men and the work was performed by the men as he had given the orders to Mr. Tommy and to Mr. Joe Hammond.

And Mr. Gordon Hammond said that—either said, “Yes, that is true,” or “That is correct.” At any rate, he admitted that that was true.

Mr. Clark: Well, I ask that the statement, “He

(Testimony of E. F. Prior.)

admitted that that was true" go out and let us have what was said, Mr. [471] Examiner.

Trial Examiner Lindsay: I believe he was giving it in two different ways, and the last part may be stricken.

Mr. Clark: Very well. All right.

Q. When was it in the conversation, Mr. Prior, that Mr. Hammond told you that neither Tommy nor Joe Hammond were authorized to make these alleged statements to the men with respect to their joining your union?

Mr. Mouritsen: May I have the question read?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: I object to it on the ground it has already been asked and answered at least twice.

Mr. Clark: I want to know when it was; there was some discrepancy then.

Trial Examiner Lindsay: He may answer it again.

The Witness: In what part of the conversation you mean?

Q. By Mr. Clark: Yes.

A. As I understand—

Mr. Mouritsen: I object on the ground that the question is vague and indefinite and has no—it is too general as to what part of the conversation,

(Testimony of E. F. Prior.)

what is to be understood under what part of the conversation. [472]

Mr. Clark: Submit it.

Trial Examiner Lindsay: Well, the question merely means during the time you had this conversation with these gentlemen, with Mr. Hammond, was the statement he made regarding that matter made to you after you had asked him as to what authority these two men had, or before you asked him what authority they had? Am I right?

Mr. Clark: That is entirely correct in view of the remark made by Mr. Prior some moments ago.

The Witness: The point is I don't recall stating that he said they did not have authority to make those remarks. I do recall that he said in reply to Mr. Spear's statement that he told the committee that Mr. Tommy Hammond and Mr. Joe Hammond did not have the right to hire and fire.

Then I asked him in regard to their status as foremen, to which he replied that was correct.

Q. By Mr. Clark: Yes?

A. Then something—I can't recall just what it was—there was another remark that was made in reference to the statements, that is, these alleged remarks that they were alleged to have made.

Q. May I interrupt you right there while you still hold your thought?

Trial Examiner Lindsay: Let him finish his answer.

The Witness: And Mr. Hammond stated that if

(Testimony of E. F. Prior.)

they had made [473] such—I guess I did—Mr. Hammond stated that if they had made such a remark, they were not authorized to, and that he would talk to them.

Mr. Clark: Very well.

Trial Examiner Lindsay: Now we will have a recess.

Mr. Clark: Very well.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Lindsay: Hearing called to order.

Mr. Mouritsen: Mr. Examiner, in view of the fact that it will be necessary tomorrow that we give up the Legion Hall by 2:30 o'clock in the afternoon, I would suggest that we perhaps alter our meeting hour, perhaps starting a little earlier and take a shorter noon recess so that we can adjourn by 2:00 or 2:15 in the afternoon. I think that would be agreeable to counsel for the Respondents.

Mr. Clark: Yes, any arrangement.

Trial Examiner Lindsay: What is your pleasure for the morning hour?

Mr. Clark: I would say 9:00 o'clock instead of 9:30 and running through until 12:00, and then some short noon recess, and then run perhaps through until 2:15.

Trial Examiner Lindsay: All right. That is agreeable.

(Testimony of E. F. Prior.)

Mr. Mouritsen: I think that will be agreeable.

Mr. Clark: An hour, Mr. Examiner, between 12:00 and 1:00 [474] for lunch probably will be enough, and that will give us an hour and a quarter in the afternoon.

Trial Examiner Lindsay: All right.

Mr. Clark: Anything that is agreeable to the Examiner himself.

Trial Examiner Lindsay: All right. We will start at 9:00 in the morning.

Mr. Clark: May I proceed now?

Trial Examiner Lindsay: Yes.

Q. By Mr. Clark: Mr. Prior, did you make any report of this meeting of November 17th which was held in Mr. Hammond's office, to the other members of your Union, prior to 10:00 o'clock of the morning of November 18th? A. Yes.

Q. And was that at a Union meeting?

A. Yes.

Q. And am I correct in stating that that Union meeting was held on the night of November 17th?

A. Yes.

Q. Now, will you please tell us whether you made any report of the meeting of November 17th to any of the other employees at the Boswell Company, namely those who did not belong to your Union, prior to 10:00 o'clock on the morning of the succeeding day?

A. If there were any others that were not members of the [475] Union that attended that meeting

(Testimony of E. F. Prior.)

that night on November 17th, they did get the report. I can't say whether there were or were not.

Q. I see.

How many persons would you say were present at the meeting which you have called the Union meeting, on the night of November 17th?

A. I think approximately 20. I am not positive as to the number.

Q. All right.

Let me direct your attention to what I believe your direct examination shows with respect to the meeting held on the night of November 16th, that is the preceding night. Am I correct in stating that you said on your direct examination that there were approximately 20 persons at that meeting in addition to Mr. Martin and Mr. Farr and Mr. Spear and yourself?

A. I believe I testified that there were 20 or 30 persons at that meeting.

Q. All right.

Now, so that, if I understand you correctly, there were approximately 20 or 30 persons present at the Union meeting on the night of November 16th, and approximately 20 persons present on the night—at the Union meeting—on the night of November 17th?

A. Yes, as near as I can place the numbers. [476]

Q. I see.

Now, will you please tell us the names of as many as you can remember of the persons who were pres-

(Testimony of E. F. Prior.)

ent at the meeting on the night of November 16th, and to which you testified on your direct examination?

A. Well, that I recall, there was Mr. Spear, Mr. Martin, Mr. Farr—I remember Mr. Steve Griffin was there—and to be exactly accurate on them, I don't know. I have been in so *many* meetings I haven't made it a habit of noting many more than the officers, the immediate officers that were present at the meeting.

Q. Well, I am correct in stating, am I not, that in your direct testimony you testified that at this meeting on the night of November 16th there were the persons you have just named, with the exception, I believe, of Mr. Griffin, whom you did not name, and about twenty others?

A. Yes. Mr. Griffin may have been at the other meeting, I am not positive.

Q. I am asking you for your recollection of your testimony on direct examination?

A. Yes. I testified that Mr. Spear, Mr. Martin and Mr. Farr—I recall those that I did testify were present.

Q. And then I think you said there were about twenty others. Do you remember that?

A. I believe I did. [477]

Q. All right.

Now, are you unable then, Mr. Prior, at this time, to give us the names of any of these twenty other people who attended that meeting?

(Testimony of E. F. Prior.)

Mr. Mouritsen: Objected to as already asked and answered.

Mr. Clark: I would like to give him another chance on it.

Mr. Mouritsen: Mr. Examiner, in this regard I think that counsel has been permitted leeway in this hearing that would be permitted in no other court that I have ever practiced in before; that he has been permitted to re-hash the same questions, to mis-state the evidence; that he has been permitted leeway that would be permitted in no other court in the land. This is another example of that same type of cross examination where he asks the same question four or five different ways, and repeats the same question, and it isn't fair to the witness. The witness is not being given credit by this Court that he is entitled to, and I object very strenuously to wasting our time in going over the same ground over and over, and I respectfully urge that the witness be given the protection that he is entitled to in a hearing of this kind, or in any other court. [478]

Mr. Clark: Well now, Mr. Examiner, may I make a statement for the record before there is any ruling, and particularly with respect to counsel's accusation of my misstating the record?

I would like to refer the Examiner to page 116 of this transcript at which appears the following question and answer, the question being put by Mr. Mouritsen of this witness:

(Testimony of E. F. Prior.)

“Q. Who were present at that meeting of the local?” (Referring to the meeting on November 16, 1938).

“A. Well, Mr. L. A. Spear, Mr. O. L. Farr, R. K. Martin that I recall, and a number of others, approximately 20 other men.”

Now this is cross examination. That question was asked for the purpose of laying the foundation for the conversation referred to. This is cross examination and I take it that I should be entitled to ask this witness the identity of the other 20. That is all I am trying to do, and with all deference to counsel, I expect that I have tried about as many cases as he has and I have yet to be accused by any court of misstating the record and of attempting to confuse witnesses and of asking questions that are impossible to understand. I will submit this record to the Circuit Court of Appeals when the proper time comes and let them pass on my conduct in trying this case. [479]

Trial Examiner Lindsay: Well, we have gone into that four or five different times. You may ask him again if you think it is material.

Mr. Clark: I asked the question, Mr. Examiner, and he said that he couldn't answer—the first time—that he didn't think he could, that he attended a lot of other meetings.

Trial Examiner Lindsay: I said you could ask him again. Very well. Proceed.

Q. By Mr. Clark: Let us have an answer to

(Testimony of E. F. Prior.)

the question, Mr. Prior, if you think you can give it. Can you name at this time any of the other 20 persons who were present at the meeting of November 16, 1938? A. No.

Q. All right.

Now, can you give us the names of any of the other 20 or 30 people—withdraw that.

Will you give us the names of any of the 20 people who were present at the meeting of November 17, 1938, that you have just testified to?

A. No, not that I recall.

Q. Can you state whether, with respect to the meeting of November 17th, and I am referring now to your union meeting on the night of November 17th, all the persons there were members of the union?

A. No, I couldn't state whether they were or whether they [480] were not.

Q. All right.

Now, yesterday you testified on your cross examination, Mr. Prior, that the charge which was filed by you with the National Labor Relations Board, that is, the Regional Director of the Twenty-First Region, upon July 21, 1938, was withdrawn during September of that year. Do you remember that testimony?

A. I remember that testimony, yes.

Q. And I think you said in that connection—you correct me if I am wrong—that you could not quite locate the date at the moment you were testifying.

(Testimony of E. F. Prior.)

Do you remember that?

Mr. Mouritsen: I object to the question as vague and indefinite; the date of the filing or the date of the withdrawal?

Mr. Clark: The date of the withdrawing of the charge.

Q. Do you remember that, that answer?

A. Yes, I remember the answer.

Q. All right.

Now, do you also remember that yesterday you testified, on your cross examination, that the date, whatever it was, upon which the charge of July 17, 1938, was withdrawn, was after your conversation with Mr. Hammond concerning the putting back to work of four union members along in October? Do you remember that? [481]

Mr. Mouritsen: I object to that question upon the ground it is vague and indefinite.

Mr. Clark: If the witness understands, Mr. Examiner, I believe he should be allowed to answer so we can get on here. I am simply trying to put it in his mind.

Trial Examiner Lindsay: He may answer.

The Witness: I recall testifying that as nearly as I could place the date that the charge was withdrawn after that meeting with Mr. Hammond. I am not positive on that date. It may have been—could have been before or it could have been after.

Q. By Mr. Clark: Well, in that connection, isn't it a fact that your reason for withdrawing the

(Testimony of E. F. Prior.)

charge on July 17th was that after you had had this conversation with Mr. Gordon Hammond you found that your union members would be put back to work as soon as new work opened up for them?

Mr. Mouritsen: I object to that as vague and indefinite.

Trial Examiner Lindsay: If he understands the question, he may answer.

The Witness: That is not correct in its entirety.

Q. By Mr. Clark: Well, let me ask you this direct question:

Isn't it a fact that the meeting with Mr. Gordon Hammond to which you were referring, and have just referred, at which the re-employment of certain union members was discussed, was [482] held on October 8? A. On October 8, yes.

Q. All right.

Now, will you please tell us whether, having had that date called to your attention, is your recollection refreshed so that you can tell us whether the charge of July 17th was withdrawn before or after October 8th?

A. I couldn't make a positive statement as to the date of the withdrawing of that charge. In connection with the withdrawal of the charge, it was on advice of the—partially on advice of the field Examiner, Mr. Larson, that the charge was withdrawn, and for that reason I can't at the moment, anyway—and I couldn't yesterday—place definitely whether the date was before or after the conversation with Mr. Hammond.

(Testimony of E. F. Prior.)

Q. Well, what is your best recollection on it?

A. (Pause) The only way I could answer that is that it could have been two weeks previous to that time and it could have been as much as two weeks following that time.

Q. I see.

Now, will you please tell us whether a copy of the charge in your file or any other record in your possession would establish the date of its withdrawal for us?

Trial Examiner Lindsay: I believe his testimony was yesterday that he believed that he had it in his file.

Mr. Clark: Or any other record. [483]

The Witness: Since the testimony yesterday, I checked my file on that particular charge. That charge was filed with the Twenty-First Region.

Q. By Mr. Clark: Yes?

A. I discussed the allegations with the Director of the Twenty-First region and stated that I—asked him which region had jurisdiction. He stated, on checking the map, that Corcoran was in the Twentieth Region.

Q. That is with head offices at San Francisco?

A. With the head office at San Francisco. I stated that inasmuch as our office was located in Wilmington, it was much more convenient for me if the charge could be handled out of the Twenty-First Region.

He stated that I could go ahead and make the

(Testimony of E. F. Prior.)

charge and requested that I accompany the charge with a letter setting forth my reasons for wanting it handled in the Twenty-First Region and that he would see what Washington said about it, which was done.

On or about, I believe, the 2nd of August, the early part of August at any rate, I was in the office of the Twenty-First Region on some other matters and the Director of the Twenty-First Region there told me that he had a letter in reply from Washington stating that the case would have to be handled in the Twentieth Region and asked me if I would withdraw the charge and re-file, which would save the transfer from [484] the office there, which I immediately, while in his office, signed a withdrawal blank and filled in the necessary blanks and signed the withdrawal.

Subsequently, the following day or so, I made out a similar charge and mailed it to the office of the Twenty-First Region——

Q. (Interrupting): Twentieth Region?

A. The Twentieth Region is correct, in San Francisco on Market Street.

In response to the sending, the forwarding of that charge to the Twentieth Region, the Director of the Twentieth Region wired me that Mr. Larson, field Examiner, could meet me at Corcoran on either the 31st of August or the 1st of September and make an investigation, at which time I met him at noon in Corcoran on the 31st. That I recall.

(Testimony of E. F. Prior.)

He investigated the allegations set forth in the charge here at Corcoran and investigated another charge that I had filed pertaining to another company here, that is, in this district, and advised me he felt there was not sufficient evidence to warrant, or at least it was impossible to secure sufficient evidence to warrant the issuing of a complaint and requested that I withdraw the charge within a couple of weeks. I do recall receiving—

Q. (Interrupting): May I ask you there, did he request that you withdraw it in a couple of weeks, or was the request made [485] of you within a couple of weeks?

A. No, he requested that I wait a couple of weeks and see if there were any other developments and if the situation had changed in any way, and if there were no further developments, he requested that I withdraw the charge.

Q. I see.

A. And I know—I say “I know”—it runs in my mind that I did receive a letter or two, more or less form letters, from Mrs. Rossiter, requesting that pursuant to the conversation with Mr. Larson that I withdraw the charge. I do know that it was later than the two weeks following the investigation by Mr. Larson that I withdrew the charge, but on what date I cannot now for the life of me state.

Q. Mr. Prior, how long was Mr. Larson down here at Corcoran with you commencing August 31st or the 1st of September?

(Testimony of E. F. Prior.)

Mr. Mouritsen: Objected to as immaterial.

Mr. Clark: I am trying to fix the date as best I can of the withdrawal.

Trial Examiner Lindsay: I think we have gone into that far enough. You may proceed.

Q. By Mr. Clark: How long was he down here with you?

A. He came in here at noon. While having lunch I outlined the reports that Mr. Gilmore and the conversations that I had had with Mr. Farr—in fact, I think Mr. Farr had lunch with us—and told him that we understood that the night of the [486] meeting of July 13th it had been reported to me—

Trial Examiner Lindsay (Interrupting): Just a moment.

Mr. Clark: I am not concerned with that. I want to know how long he was here.

The Witness: How long he was here?

Q. By Mr. Clark: Yes.

A. Well, we separated immediately after lunch and he said he would go down to the company's office. As I understand it, he was here all of that afternoon.

Q. Was he here only the one day so far as you know?

A. The one day. I know I met him that night in Fresno.

Q. And was it at that time or on that occasion that he requested you to drop the charge because of insufficiency of the evidence?

(Testimony of E. F. Prior.)

A. It was either that night or the following day when we were discussing it and also another case.

Q. I see.

And you think it was some time then more than two weeks after September 1st or your having received that advice that you actually dismissed the charge?

A. I am positive that it was more than the two weeks because I did receive a communication from Mrs. Rossiter regarding that.

Q. I see.

Mr. Mouritsen: Have you established the identity of Mrs. [487] Rossiter?

Mr. Clark: Well, Mrs. Rossiter is the Regional Director of the Twentieth Region, is that not correct?

Mr. Mouritsen: Yes, that is correct.

Mr. Clark: Very well. So stipulated.

Q. Now you, of course, the record—withdraw that.

By whose authority did you ultimately withdraw the charge of July 17th?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: Sustained. We have gone into that now quite thoroughly.

Proceed.

Mr. Clark: May I make a statement, Mr. Examiner, in respect to that question, and ask that the ruling be stricken and reserved until I make the statement?

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: Yes. Strike the ruling.

Mr. Clark: My purpose in asking the question is merely to find out whether this charge was made by Mr. Prior on behalf of any employees of Boswell and Company or on his own behalf, and I take it that the authority by which you withdrew it is indicative of that proposition.

Trial Examiner Lindsay: Now, first of all, the charge, if there was any—apparently there was—was withdrawn. We have no issue based on something that does not exist. I am [488] exceedingly lenient in letting you even go into it, and I request that you, having had the opportunity to go into it, which has been gone into fully, that you proceed on something else, Mr. Attorney. [489]

Mr. Clark: Very well. I won't press that.

Q. Mr. Prior, subsequent to your meeting of the morning of November 19th—may I have that stricken, your Honor, and commence over?

Trial Examiner Lindsay: Yes.

Q. By Mr. Clark: Subsequent to your meeting of the morning of November 19th with Mr. Robinson and the other gentlemen whom you named, in the office of the Boswell Company here at Corcoran, did you have a further meeting with Mr. Robinson on or about November 28th?

A. Yes, I did; on or about November 28th.

Q. Yes.

You have that particular occasion or incident in mind, haven't you?

(Testimony of E. F. Prior.)

A. Not right at the moment, I don't. Yes, I believe I do recall it.

Q. Do you recall testifying to such a meeting on direct examination, do you? A. Yes.

Q. Now, will you please tell us the occasion for that meeting?

A. To further endeavor to have the employees who had been evicted from the plant on November 19th placed back on the payroll of the Company.

Q. Do you remember who was present at that meeting? [490]

A. As I recall, it was Mr. R. K. Martin. If I have the correct meeting in mind, that was at the time Mr. Martin was with me in Mr. Robinson's office; and Mr. Robinson, of course, and myself.

Q. And were any others present?

A. At the meeting of November 28th, if I have the date fixed right, there was none.

Q. Wasn't the meeting of November 28th which you are referring to or which you have in mind, the last meeting held with Mr. Robinson, that is, Mr. Louie Robinson, prior to the meeting of January 17th, referred to in the testimony, which is in evidence? A. Yes, I believe that is correct.

Q. Yes.

Now, does that refresh your recollection somewhat with regard to this particular occasion?

A. Yes, that helps me place the meeting.

Q. Can you now state whether any persons other than those you have mentioned were present at that meeting?

(Testimony of E. F. Prior.)

A. Mr. Robinson, Mr. Martin and myself.

Q. All right.

Now, will you please tell us what, if anything, you said at this meeting of November 28th to Mr. Robinson, with respect to the members of your Union?

A. I told Mr. Robinson that we felt that the men had been dis- [491] criminated against, and we wanted to discuss the matter and see if something couldn't be worked out to clear up any misunderstanding that might be had, and to wipe the thing off and put these men back on the payroll, that we felt they were entitled to be, under the law.

Q. All right.

Was it prior to that time that you had been advised by Mr. Robinson, or was it on that occasion when Mr. Robinson advised you of the notice which Mr. Larson had O.K'd, and which was to be posted in the plant?

A. I believe there was some discussion in regard to that notice at that meeting.

Q. All right.

Was there any discussion in regard to that notice between you and Mr. Robinson prior to this meeting of November 28th?

A. I believe not. I do not recall any meeting between November 19th with Mr. Robinson, and November the 28th.

Q. All right.

Will you please tell us what you remember at this

(Testimony of E. F. Prior.)

time of the discussion regarding the notice which took place at the meeting of November 28th between you and Robinson?

A. As I recall it, I asked Mr. Robinson—or I think I, rather, stated to Mr. Robinson it was reported to me that the notice had not been posted according to Mr. Larson's suggestion. Mr. Robinson stated that it had been. And I told him [492] that my understanding with Mr. Larson was that the notice was to be placed or posted in all departments of the plant. And Mr. Robinson stated that his understanding was that on the office bulletin board was sufficient.

Q. Was that the extent of the conversation concerning the notice?

A. Generally, as I recall it, it was.

Q. During this conversation on November 28th between you and Mr. Robinson, did you call his attention or refer to a conversation you had a few days previously, with Colonel Boswell in Los Angeles?

A. Yes, I believe that I did.

Q. The conversation had with Boswell.

And in that connection, did you mention this notice?

A. I told Mr. Robinson that we had discussed that notice, yes.

Q. That is, that you and Colonel Boswell had?

A. Yes, that Colonel Boswell and I had discussed the notice.

(Testimony of E. F. Prior.)

Mr. Mouritsen: Mr. Counsel, may we establish who Mr. Colonel Boswell is?

Mr. Clark: Colonel Boswell is the president of the Respondent, Boswell Company, in Los Angeles, J. G. Boswell Company.

Trial Examiner Lindsay: What is his first name?

Mr. Clark: J. G. Boswell.

Trial Examiner Lindsay: May I have his first name spelled? [493]

Mr. Clark: His first name is James.

May I have the last question read?

Trial Examiner Lindsay: Yes.

(The question referred to was read by the reporter, as set forth above.)

Q. By Mr. Clark: Now, will you please tell us what you said to Mr. Robinson on November 28th regarding your conversation with Colonel Boswell in Los Angeles?

A. I don't recall what I told him other than that I do recall that I mentioned that Colonel Boswell and I had discussed it.

Q. Didn't you tell Mr. Robinson on November 28th that Colonel Boswell had said to you a few days previously in Los Angeles, that the policy of the Company, that is, J. G. Boswell Company, was stated in that notice, or words to that effect?

A. I don't recall whether I made that statement to Mr. Robinson or not. Colonel Boswell stated that.

Q. Isn't that how the notice happened to come

(Testimony of E. F. Prior.)

up for discussion between you and Louie Robinson on November 28th? A. I don't know.

Q. You don't remember that?

A. I don't recall, no.

Q. All right.

Just so we can clear it up, let me ask you this: It is a fact, isn't it—well, I don't want to get into that. I will withdraw that, Mr. Examiner and go back to it in its proper [494] place.

What, if anything, did Mr. Robinson state to you on the morning of November 28th with regard to your Union members?

A. In regard to the re-employment of the Union members?

Q. Yes.

A. He asked me just who I had reference to. I said, "Well, we will name them." And I named Mr. Spear; and Mr. Robinson said, "Well," he says, "there has been some work we could have used Mr. Spear on since he has been off, and we can use him from time to time as there is work for him."

And he wrote Mr. Spear's name on a pad.

Then I called the name of Mr. Martin, Mr. R. K. Martin, and Mr. Robinson laid his pencil down and he said, "Now, there is no work. The operation that Mr. Martin was on has definitely shut down, and there is no work for Mr. Martin."

Q. Did you know what Mr. Martin had been doing?

A. I understood he was working in the gins that season.

(Testimony of E. F. Prior.)

Mr. Mouritsen: I move that the answer go out as hearsay.

Trial Examiner Lindsay: It may stand.

Mr. Clark: I didn't hear the Examiner's ruling.

Trial Examiner Lindsay: I said it may stand.

Mr. Clark: Go ahead.

The Witness: Where was I?

Mr. Clark: I will reframe the question.

Trial Examiner Lindsay: Let him finish. [495]

The Witness: What was the question?

Trial Examiner Lindsay: You were naming those individuals that you named to Mr. Robinson at that meeting.

Mr. Clark: And we started with Spear, and we are now with Martin.

The Witness: Mr. Robinson laid his pencil down and stated that the work that Mr. Martin had been on had definitely shut down, and that they could not use Mr. Martin; that they might at sometime later use him, but that it was indefinite.

Q. By Mr. Clark: Now, were any other individuals named by you or discussed by Mr. Louie Robinson on this occasion?

A. When Mr. Robinson made that statement in regard to Martin, I stated to Mr. Robinson, I says, "Well, Mr. Robinson, unless all of these employees are going to be given consideration—they have all been given the same treatment. They are all evicted—and unless all of these employees are going to be given the same consideration, there is no need of

(Testimony of E. F. Prior.)

discussing the matter further. We are wasting your time, and we are wasting ours.”

Q. And what happened after that?

A. In substance, the conference ended, and we left either immediately or very shortly after that.

Q. I see.

And you did not name any others, then, of the members of your Union? [496]

A. I did not.

Q. In response to Mr. Louie Robinson’s prior request—your answer is, “No, I did not”?

A. That is correct.

Q. At that time did you know that these men who were members of your Union and whom you claim were evicted on November 18th from the plant of J. G. Boswell and Company here in Corcoran had been receiving wages from the Company?

Mr. Mouritsen: May I have the question, please?

Mr. Clark: Continuously after November 18th?

(The question referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial, calling for hearsay from this witness.

Mr. Clark: May I make a statement, Mr. Examiner, before the ruling?

Trial Examiner Lindsay: It isn’t necessary.

He may answer the question. If it were more specific, because the testimony shows yesterday that——

(Testimony of E. F. Prior.)

Mr. Clark (Interrupting): Very well, I will withdraw it.

Q. At that time, Mr. Prior, namely, on November 28th, did you know that Mr. Farr and the others who had left the plant on November 18th had continued to receive money from Boswell and Company?

A. I knew that some of them had, because we had had photo- [497] static copies made of some of the checks.

Q. I see.

Do you remember who had?

A. Mr. Martin and Mr. Farr were two that I believe—I know that Mr. Martin did—and I believe that Mr. Farr and a number of others of them.

Q. How about Mr. Spear?

A. I am not positive whether Mr. Spear did or not. We had the copies.

Q. How about Briley?

A. I am not sure whether a picture was made of Mr. Briley's or not.

Q. I mean, did Briley receive any such checks, so far as you know?

Trial Examiner Lindsay: Well, I believe all of this testimony is in the record of Board's Exhibit 3.

Mr. Mouritsen: That is correct, Mr. Examiner. [498]

Mr. Clark: Yes, that is right.

Q. As a matter of fact, Briley went back to work in a couple of days, didn't he, at the plant?

(Testimony of E. F. Prior.)

A. The date that Mr. Briley returned I don't know. It may have been 30 or 40 days later. I don't recall how long.

Q. Well, please tell us whether or not on November 28th when you were talking to Mr. Louis Robinson you knew that Joe Briley, one of your members, had returned—had already returned to work at the plant.

Mr. Mouritsen: Objected to as assuming a fact not in evidence, Mr. Examiner. I submit that counsel is out of order in that he incorporates in his questions testimony that has not been presented to this hearing and makes it a part of his question, and in effect testifying.

Mr. Clark: Oh, well, I am—I will submit that, your Honor. This is cross examination and I have a right to ask this witness whether certain things happened whether he has testified to them or not.

Trial Examiner Lindsay: He may answer.

The Witness: I don't know whether Mr. Briley was on the payroll on that date or not.

Q. By Mr. Clark: Pardon me.

I am asking you for your knowledge on November 28th. I am only after what you knew about Joe Briley with respect to his re-employment, if any, on that date, November 28th. [499]

A. I may have—, if he was on the payroll on November 28th, I may have knew it on November 28th, but today I don't know what date Mr. Briley was on the payroll.

(Testimony of E. F. Prior.)

Q. I am not only asking you for his being on the payroll—

Trial Examiner Lindsay (Interrupting): He means back to work.

The Witness: Yes, that is right.

Q. By Mr. Clark: How about Galvan and however you pronounce—I will have to get the charter to get the pronunciation.

(The document referred to was passed to Mr. Clark.)

Q. By Mr. Clark: Now, on November 28th—when you were talking to Mr. Louie Robinson, did you know whether or not Manuel Escobado or Peter Galvan had returned to work prior to that time?

Mr. Mouritsen: Objected to as immaterial.

Trial Examiner Lindsay: He may answer.

The Witness: May I have that question?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I don't recall any discussion in regard to those individuals or whether they were or were not working.

Q. By Mr. Clark: Well, I understood you to say that you were calling on Mr. Robinson on behalf of the members of your [500] union and for the purpose of getting them reinstated in their employment, isn't that true?

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: It means those that have not been returned to work, I assume.

Q. By Mr. Clark: Well, didn't you know what members of your union had not been returned to work?

Trial Examiner Lindsay: He may answer.

The Witness: The conversation was entirely pertaining to the 7 men who had been evicted from the plant on November 18th.

Q. By Mr. Clark: Wasn't Briley one of those men? A. He was.

Q. Well, the fact is, isn't it, Mr. Prior, that when you were told by Mr. Robinson that Martin's particular job had become exhausted or that that operation had given out, you then told Mr. Robinson that if Martin wasn't taken back, then nobody would come back to work?

A. It is possible that I made that statement.

Q. Isn't that the substance of what you did say?

A. I wouldn't say that was the substance. It is possible I made that statement.

Q. Isn't that just what actually happened?

A. To the best of my knowledge, there was never but two of them offered employment.

Mr. Clark: Well, may I ask that that go out as not re- [501] sponsive? And if my question is susceptible of an answer, that the answer be given?

Trial Examiner Lindsay: Well, he has already answered it; but he may answer it again.

(Testimony of E. F. Prior.)

Mr. Clark: May I have it read?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I ask that that go out as not responsive; and answer the question.

Trial Examiner Lindsay: It may go out.

Mr. Clark: I will reframe it.

Q. Isn't that what happened, Mr. Prior, namely, that when Mr. Robinson told you that the work—that Martin's work had given out and that he, therefore, wouldn't be put right back to work, you refused to let anybody come back?

A. No, I didn't refuse to let anybody come back.

Q. Didn't you state to Mr. Robinson on that occasion that if he wouldn't put Martin back to work immediately then there was no use discussing it?

A. I told him there was no use discussing the matter further, yes.

Q. And hadn't he told you he could use Spear immediately? A. No.

Q. What did he say about Spear? [502]

A. He stated that there had been days in the past that Mr. Spear could have worked and that there would be work coming up occasionally from time to time that they could use Mr. Spear on.

Q. Didn't he tell you that he could use Spear right then? A. I—

(Testimony of E. F. Prior.)

Trial Examiner Lindsay (Interrupting): Just a moment. He has answered that question two or three times; and don't argue with the witness.

Mr. Clark: I am not arguing. I withdraw that. May I have an answer to it?

Trial Examiner Lindsay: You have already had the answer.

Mr. Clark: I am referring counsel to page 139 of the transcript.

Have you it?

Mr. Mouritsen: I have it.

Q. By Mr. Clark: Mr. Prior, I will show you an answer which purports to have been given by you at line 10, page 139 of the transcript of this proceeding, being the report of the testimony for May 19, 1939. I will ask you to read it commencing at line 8.

A. (Examining document.)

Q. Have you finished? A. Yes.

Q. Is that an accurate report of the testimony which you gave [503] before the Examiner on May 19, 1939, as it appears on page 139, line 8 of this transcript?

A. I would say that it is, yes.

Q. It is true, isn't it? A. Yes.

Mr. Clark: I think I had better, Mr. Examiner—it will only take a moment—I want particularly to read into the record at this time the following sentence:

“Mr. Robinson wanted to know who the men

(Testimony of E. F. Prior.)

were that we referred to that should be placed back on the payroll and I named—started to name the men. I named Mr. Spear and he said that as there was work from time to time that they could use Mr. Spear; that there had been times during the time of November 18 to that date that he would have worked a few days,'

that being on page 139, lines 13 to 19 of the transcript.

Do you know whether or not Mr. Spear ever applied back to the Boswell Company for any work after November 28th?

A. Not to my knowledge.

Q. Had you instructed him not to do so?

A. No.

Q. Did you instruct any of these men, that is, those whom you claimed were evicted on November 18, as shown by this record, not to apply to the company for work after your conversation with Mr. Robinson of November 28th? [504]

A. No.

Q. At the time the boycott which you testified to on your direct examination, I believe, was declared in January of this year, did you instruct any of the members of your union not to apply for employment to J. G. Boswell and Company?

A. No.

Mr. Mouritsen: That is objected to—(Pause).

Q. By Mr. Clark: Do you know whether or not

(Testimony of E. F. Prior.)

Mr. Farr or any of the other persons shown by this—withdraw that.

Do you know whether or not Mr. Farr or Mr. Martin or Mr. Wingo and Mr. Andrade ever applied to the J. G. Boswell and Company for employment after your conversation with Mr. Robinson on November 28th? A. I do not know.

Q. Did you instruct him not to make such application? A. I never instructed anyone not to.

Q. Very well.

Now, I believe you told us already, and I will ask you just to be sure about it, that this conversation of November 28th was the last conversation that you had with Mr. Louie Robinson until the conversation of January 17th which is referred to in the advertisement in evidence in this case as Boswell's Exhibit 3, I believe it is.

A. That is the only conversation that I recall, yes.

Q. Yes. [505]

Now, I want to direct your attention to a meeting a few days earlier, namely, on November 25th, between you and Colonel J. G. Boswell in Los Angeles. Have you that occasion in mind? A. Yes.

Q. You called on Colonel Boswell at his office in Los Angeles at that time, didn't you?

A. Yes.

Q. And will you please tell us in effect what you said to the Colonel?

A. Well, after the formal introductions I told

(Testimony of E. F. Prior.)

Colonel Boswell that I thought there had been a misunderstanding of the conditions and circumstances out at the plant and that it was my opinion that it would be a good idea to discuss them, that he understand our position and we understand the company's position and see if the matter couldn't be ironed out. In substance, that is what I said to him.

I recall that Mr. Boswell made the statement——

Q. (Interrupting): Just a minute before you get to Mr. Boswell's statement. Have you completed what you said to him?

A. I do recall that the charge was mentioned.

Q. What charge?

A. The charge that had been filed with the Twentieth Region.

Q. Are you speaking of the charge of July 17th?

[506]

A. No, the one dated on or about November 21 of 1938.

I mentioned the charge, had a copy of the charge with me, and Colonel Boswell read the charge and it was discussed. Colonel Boswell stated——

Q. (Interrupting): Before you get to what he said, is that all that you said?

Mr. Mouritsen: I object to it upon the ground that it is vague and indefinite and that there is no limitation upon the question itself as to whether it was said at this point of the conversation or during the entire conversation.

(Testimony of E. F. Prior.)

Mr. Clark: Well, there has been a conversation that was gone into on direct examination, and I am simply trying to elicit *what* this witness said.

Trial Examiner Lindsay: Let him answer the question, please.

Proceed with the examination.

Q. By Mr. Clark: Anything else that you said?

Trial Examiner Lindsay: Anything you said at that time——

Mr. Clark (Interrupting): So far as the substance of the conversation goes.

The Witness: Not that I recall at this moment.

Mr. Clark: All right.

Q. And did Colonel Boswell then during that conversation say to you that the position of the Boswell Company was correctly [507] set forth in the sign which had been suggested by Mr. Larson of the National Labor Relations Board and posted on the property——

Trial Examiner Lindsay (Interrupting): May I have that question read?

Mr. Clark: I haven't finished.

Trial Examiner Lindsay: I am sorry.

Mr. Clark: I will withdraw it.

Q. Did Colonel Boswell say to you on that occasion, Mr. Prior, that the position of the Boswell Company was correctly set forth in the sign which had been suggested by Mr. Larson of the National Labor Relations Board and concerning which you testified on your cross examination yesterday?

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: Now just a minute. Read the question, please.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Signed?

Mr. Clark: Sign. It is in evidence, Mr. Examiner.

Trial Examiner Lindsay: You mean the——

Mr. Clark (Interrupting): S-i-g-n.

Trial Examiner Lindsay: The notice?

Mr. Clark: The notice. Change it to notice in the question. May I have it read back? [508]

Trial Examiner Lindsay: Put in the word "notice."

Mr. Clark: Instead of "sign."

The Witness: Colonel Boswell could have made that statement. I am not positive whether he did or not.

Q. By Mr. Clark: Did not you testify just a few minutes ago that he did make that statement during your conversation with him in Los Angeles on November 25th?

Trial Examiner Lindsay: He has not made that statement.

The Witness: I don't believe that I did.

Q. By Mr. Clark: What is your best recollection on it now as to whether or not he made a statement substantially as I have indicated in my question?

(Testimony of E. F. Prior.)

Mr. Mouritsen: I object to the question upon the ground it is vague and indefinite.

Mr. Clark: Submit it.

Trial Examiner Lindsay: Well, he has answered the question. He said he didn't know whether he made the statement or not.

Mr. Clark: I am asking his best recollection on it, whether he did or not.

The Witness: Mr. Boswell could have made the statement. I don't recall it.

Q. By Mr. Clark: Well, have you any—then, as I understand you, Mr. Witness, you have no recollection at all to the effect that Mr.—that Colonel Boswell did make any such state- [509] ment? Is that your testimony?

A. In reference to that notice, I do not have any recollection of it.

Q. Well, did he make any statement to you which included the subject matter of the notice which has been marked Boswell's Exhibit 2 for identification in this case, and which you have examined?

A. We discussed that notice, yes.

Q. All right.

Now, tell me what discussion you had, as far as the notice is concerned?

A. The only thing that I recall was that Colonel Boswell stated that his report was that the notice had been posted in the plant. Now, that is all that I recall as to his statement directed towards the notice.

(Testimony of E. F. Prior.)

Q. All right.

Now, can you tell us whether or not he also said to you that the notice accurately set forth the Company's position in this matter?

Mr. Mouritsen: I object to that as already asked and answered.

Trial Examiner Lindsay: It has been answered, but he may answer it again. I really don't get the purpose of the repetition of the questions.

Answer the question, please? [510]

The Witness: Colonel Boswell could have made that statement, but I don't recall it if he did.

Mr. Clark: Very well.

Is your Honor going to take a recess at this time?

Trial Examiner Lindsay: We will adjourn until 2:00 o'clock.

(Thereupon, at 12:00 o'clock M., a recess was taken until 2:00 o'clock P. M. of the same date.)

[511]

After Recess

(Whereupon, at 2:00 o'clock p. m., the hearing was resumed as follows:)

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: May I proceed now?

Trial Examiner Lindsay: Yes.

E. F. PRIOR

the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and further testified as follows:

Cross-Examination
(Continued)

By Mr. Clark:

Q. Mr. Prior, why was it that you made photostats of the checks received by the members of your union after November 18th, from the Boswell Company?

Mr. Mouritsen: Objected to as immaterial.

Trial Examiner Lindsay: He may answer.

The Witness: We have made that a practice in a number of cases where wages have been paid employees who are off due to union activities; use them for references and in support of our records.

Q. By Mr. Clark: Well, is it the purpose also to use them for exhibits in any case that might follow before the Board?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: Sustained. [512]

Q. By Mr. Clark: Have you given us the sole purpose of your having photostated these particular checks?

A. Yes, sir; for a matter of our records.

Mr. Clark: I see. No further questions.

Redirect Examination

By Mr. Mouritsen:

Q. In cross examination, Mr. Prior, I believe

(Testimony of E. F. Prior.)

you were asked whether or not the California State Council of Soap and Edible Oil Workers had obtained a charter from the American Federation of Labor.

Do you recall that? A. Yes, I do.

Q. And I believe you stated that it had not obtained, not at this time obtained a charter from the American Federation of Labor. Is that correct?

A. Yes, sir.

Q. Will you state whether or not the California State Council of Soap and Edible Oil Workers has made application to the American Federation of Labor for a charter? A. We have not.

Q. Also on your cross examination I believe you were asked regarding the posting of a notice by the company at the Corcoran plant. Do you recall that?

A. Yes.

Q. And I believe your testimony was that you were informed regarding the posting of this notice by Mr. Louis T. Robinson, [513] is that correct?

A. Yes.

Q. Do you recall the approximate date of the conversation with Louis T. Robinson in which he informed you regarding the posting of the notice?

A. As near as I can place the date, on or about November 28, 1938.

Q. During any of your visits to the plant during the year 1938 or 1939 did you ever see a copy of a notice such as Mr. Robinson discussed posted in the plant?

(Testimony of E. F. Prior.)

Mr. Clark: Objected to upon the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: He may answer.

The Witness: No, I never have.

Mr. Mouritsen: No further questions.

Mr. Clark: No further questions.

(Witness excused.)

Mr. Mouritsen: Call Mr. Martin.

R. K. MARTIN,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Mouritsen:

Q. What is your name? [514]

A. R. K. Martin.

Q. Where do you live?

A. 1040 Hanna Avenue, Corcoran.

Q. In Corcoran, California? A. Yes.

Q. Have you ever been employed by the J. G. Boswell Company? A. Yes.

Q. When were you first so employed?

A. 16th of September, 1930.

Mr. Clark: Mr. Examiner, may I state for the respondents, Mr. Painter will handle this witness and any objections which we might have to make to the direct examination.

(Testimony of R. K. Martin.)

Trial Examiner Lindsay: What is that date? I didn't get it. September what?

The Witness: 16th.

Trial Examiner Lindsay: 1930?

The Witness: Yes.

Q. By Mr. Mouritsen: What type of work did you start in to do at that time?

A. Tying cotton at the gin, press room. [515]

Q. Pressman on one of the gins at the Company?

A. Yes.

Q. What rate of pay did you receive at that time? A. Thirty cents, I think.

Q. 30 cents an hour? A. Yes, sir.

Q. What hours did you work?

A. Twelve hours.

Q. How many days a week? A. Seven.

Q. How long did you continue to work for the Company after you started the first time?

A. Until April 1.

Q. Of what year? A. 1931.

Q. 1931? A. Yes, sir.

Q. What occurred at that time with reference to your employment with the Company?

A. I quit and went back to Georgia.

Q. After that time did you ever resume your employment with the Company? A. In 1934.

Q. Do you recall the month?

A. August 4th. [516]

Q. What type of work did you do at that time for the Company?

(Testimony of R. K. Martin.)

A. I started to work stacking grain in the warehouse.

Q. What was your rate of pay per hour?

A. 35 cents.

Q. What hours per day did you work?

A. Eleven hours, I think, while I was on the grain job.

Q. And how long did you work on stacking grain, I believe you stated?

A. About two weeks.

Q. Then what did you do?

A. First one odd job, and then another.

Q. How long did you do odd jobs?

A. Until the ginning season started in September, I believe it was.

Q. Of what year? 1934? A. Yes, sir.

Q. How long did you do that type of work?

Trial Examiner Lindsay: Just a moment. I think your question is a little misleading.

May I have the preceding question read?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Yes. What type of work?

Mr. Mouritsen: I withdraw the question.

Q. What work did you do when the—— [517]

Trial Examiner Lindsay (Interrupting): September, 1934, when you went back?

Q. By Mr. Mouritsen: What type of work did you do in September of 1934?

(Testimony of R. K. Martin.)

A. Worked in the gin as pressman, tying up cotton at the press.

Q. And what hours per day did you work while you were doing that type of work?

A. Eight hours.

Q. What rate of pay did you receive while you worked as pressman? A. 35 cents.

Q. How long did you continue to do that type of work?

A. Oh, until the end of the ginning season; I think it was in January or maybe February.

Q. Of what year? A. '35.

Q. Yes.

And then did you continue to work for the Company after that January of '35? A. Yes, sir.

Q. What type of work did you do then?

A. Oh, just outside work. Yard work, and was laid off a day or two now and then and put back.

Q. And how long did that type of work continue? [518]

A. Until about the middle of June, I believe.

Q. And what type of work did you do in the middle of June, 1935?

A. I went to work as a helper in the expeller room.

Q. How long did you continue to do that type of work?

A. Well, I have forgotten just how long, but I worked in the expeller room ever since.

Trial Examiner Lindsay: What room?

(Testimony of R. K. Martin.)

The Witness: Expeller room.

Trial Examiner Lindsay: May I interpose one question? I would like to know what the expeller room is?

The Witness: It is where they extract oil from the seed, continuous presses.

Q. By Mr. Mouritsen: And that is the type of work that you have done up until the termination of your employment with the Boswell Company; is that correct? A. Except I ginned a few days.

Q. Yes.

And did you, during the course of your employment, ever receive more than 35 cents an hour?

A. Yes, sir.

Q. What rates of pay have you received other than 35 cents an hour and 30 cents an hour?

A. 40 and 50.

Q. And when were you last employed by the J. G. Boswell Company? [519]

A. In November, 1938. November 18th, 1938.

Q. And at that time, and immediately prior to that time, what rate of pay were you receiving?

A. I received 40 until November—October 10th.

Q. Of what year? A. 1938.

Q. And then what occurred?

A. I went to ginning and got a raise of 10 cents an hour.

Q. And for a little over a month in the year 1938, you received 50 cents per hour; is that correct?

A. Yes, sir.

(Testimony of R. K. Martin.)

Q. Was there a period during September of 1937 when you worked for someone else other than the J. G. Boswell Company? A. Yes, sir.

Q. What—for how long a period did you work for someone else other than the Boswell Company beginning in September of 1937?

A. Until March—I believe it was March, and I worked two weeks for the Company, ten days or two weeks, something like that.

Q. [That is March of what year?

A. '37, I believe—'38.

Trial Examiner Lindsay: I don't quite understand his answer on those two weeks.

Mr. Mouritsen: Well, I will straighten that out in a [520] minute.

Q. In other words, Mr. Martin, from September of 1937 until March of 1938, you worked for someone else other than the Boswell Company; is that correct? A. Yes. [521]

Q. Now, what did you mean with reference to your statement about a two-week period in there?

A. Well, I went back to work for the company and worked two weeks, and there was a lay-off and I went to Colorado then for thirty days and didn't come back until May.

Q. Of what year? A. 1938.

Q. In other words, after March of 1938 you worked for a period of two weeks for the company and then your employment ceased again, is that correct? A. Yes.

(Testimony of R. K. Martin.)

Q. Mr. Martin, are you a member of a labor organization? A. Yes, sir.

Q. Of what organization?

A. Cotton Products and Grain Mill Workers Union No. 21798.

Q. When did you become a member of that local?

A. September 2nd, 1938.

Q. During the course of your employment with the J. G. Boswell Company did you ever have any conversation with Tom Hammond regarding the union? A. Yes, sir.

Q. Do you recall the approximate date of such a conversation? A. Not the exact date, no.

Q. Could you give us the approximate date? [522]

A. Well, about the 24th or 25th of September.

Q. Of what year? A. 1938.

Q. Where did the conversation take place?

A. In the expeller room.

Q. Other than yourself and Mr. Tom Hammond was anyone else present? A. No, sir.

Q. Will you state the conversation that took place at that time between yourself and Mr. Tom Hammond?

Mr. Painter: That is objected to on the ground it is hearsay, not binding on any of the respondents, and is not authorized; and no proper foundation has been laid.

Trial Examiner Lindsay: Is this the same Tom Hammond who is classified in the testimony as being a foreman?

(Testimony of R. K. Martin.)

The Witness: Yes, sir.

Trial Examiner Lindsay: He may answer, and you may have an exception.

The Witness: Mr. Farr told me that he was accusing me of——

Mr. Painter (Interrupting): Just a moment. Let us have this answer responsive to the question.

Q. By Mr. Mouritsen: In other words, Mr. Martin, the reference is to a conversation between you and Tom Hammond, so will you state what you said to Mr. Tom Hammond and what [523] Mr. Tom Hammond said to you on this occasion?

A. I asked him—he told me——

Mr. Painter (Interrupting): The same objection, your Honor.

Trial Examiner Lindsay: The same ruling.

The Witness: I asked him if he told anybody that anybody had told him that I was going to organize that plant.

He said, "Yes."

I asked him who it was. He said, "A guy in the office."

I asked him what his name was and he said, "Well, just a guy in the office."

Then he finally admitted that he heard that uptown.

Q. By Mr. Mouritsen: Is that what he stated, that he had heard it uptown? A. Yes.

Q. Now continue.

A. I told him that I hadn't figured on organizing, but I believed it could be done.

(Testimony of R. K. Martin.)

He said, "Well," he said, "if the union comes in here," he said, "clean it up and lock it up and shut the door."

He said, "Mr. Gordon Hammond has a letter from Mr. J. G. Boswell stating if they did, the union did come, to lock up."

Mr. Painter: Now, may it please the Examiner, I want to move to strike that entire conversation upon the same grounds as I made to my objection. [524]

Trial Examiner Lindsay: The motion denied.

Q. By Mr. Mouritsen: During that conversation was anything said respecting Shorty Gilmore?

Mr. Painter: Same objection, your Honor.

Trial Examiner Lindsay: He may answer.

The Witness: He said that he didn't blame anybody for not having anything to do with anything that Shorty Gilmore had anything to do with. I told him that Shorty Gilmore was not having anything to do with it; he never as much mentioned unions to me.

Q. By Mr. Mouritsen: And who is Shorty Gilmore? A. He is one of the ex-employees.

Q. Do you know whether his name is James A. Gilmore? A. I think so.

Q. I believe you stated that you last worked for the company on November 18, 1938, is that correct?

A. Yes.

Q. Did you work during the morning of that day?

A. Yes.

(Testimony of R. K. Martin.)

Q. During the morning of that day did you have a conversation with Bill Robinson? A. Yes.

Q. Who is Bill Robinson?

A. Well, he is known as the troubleshooter and gin foreman, I suppose. [525]

Q. Was anyone else present when you had your conversation with Bill Robinson?

A. No, sir.

Q. Where did the conversation take place?

A. At the gin door, No. 3 gin.

Q. At that time what did you say to Mr. Robinson and what did Mr. Robinson say to you?

Mr. Painter: Your Honor, I want to object to that question on behalf of all respondents, it being hearsay, no authorization shown for Mr. Robinson to speak for the company, and it is not binding upon any of the respondents.

Trial Examiner Lindsay: He may answer.

The Witness: My gin began to die, so I pulled the clutch out and started out to see what the trouble was with the engine, and met him coming in the door.

He says, "Martin, we are going to have a little meeting out here to see whether we are going to have this union or not. We wanted everybody to go out there and talk things over."

He said, "Now, Martin," he said, "whatever you do, don't go out there and raise no racket." [526]

I says, "O. K.," but I says, "I won't go out there and have some of those guys tell me to my face what I have heard to my back."

(Testimony of R. K. Martin.)

He said, "What is that?"

I said, "Talk has been going around that the Union was all right, not these God damned low down leaders."

I says, "I won't stand for that to my face."

He said, "I don't blame you." He said, "You got a right to your belief just the same as they have to theirs," and he said, "If you believe in the A. F. of L. Union that is O. K. I don't blame you for that."

I started on. He said, "Martin, whatever you do, don't raise no racket."

I said, "O. K."

Q. By Mr. Mouritsen: Was that all of the conversation?

Mr. Painter: Same objection.

The Witness: At that time.

Trial Examiner Lindsay: The same ruling.

Mr. Painter: Now, your Honor, I move to strike the conversation upon the same grounds.

Trial Examiner Lindsay: Motion denied.

Q. By Mr. Mouritsen: Did you then continue out of the gin door? A. Yes, sir.

Q. Will you state what you saw and observed after you went [527] out of the gin door?

A. Well, there was a bunch of men gathered up around the other gin, kind of between my gin and the other gin, about sixty men bunched up in a bunch. I walked up there to take part in a meeting, and they began, wanted somebody to start the conversation. Finally, Mr. Ely, he started the conversation.

Q. Do you know what Ely's name is?

(Testimony of R. K. Martin.)

A. Foy, I believe is his name.

Q. Is he also known as Jack Ely? A. Yes.

Q. Will you state what he said, what you heard him say?

Mr. Painter: Your Honor, I object to this as hearsay, not binding upon the Respondents.

Trial Examiner Lindsay: He may answer.

The Witness: He walked up to Mr. Farr, and said, "Farr, we want to know about this Union."

He said, "Well, I don't know what you want to know about it."

He said, "We want to know what there is to it."

Farr said, "We don't discuss our business outside of the meeting."

And he said—somebody said, "Where is the president? Who is the president?"

He said, "I am not the president. Mr. Spear is president." [528]

Somebody said, "Bring him in."

Mr. Spear, he was sitting over on the side of the crowd and he got up and walked over. He said, "Boys, what is it you want to know?"

A fellow by the name of Bill Nichols said, "We want to know about this God damned Union of yours."

Q. By Mr. Mouritsen: Now, who is Mr. Nichols?

A. He is a carpenter, one of the carpenters.

Q. Is he an employee of Boswell Company?

A. Yes, sir.

Q. Was he at that time? A. Yes.

(Testimony of R. K. Martin.)

Q. Now, continue.

Mr. Painter: I move to strike the entire conversation, your Honor, upon the same grounds as I urged upon the objection.

Trial Examiner Lindsay: I understand this is the same meeting that was held outside the plant on Company property on the morning of the 18th?

Mr. Mouritsen: Well, I will ask the witness, Mr. Examiner, if I may.

Q. Where did this meeting of the employees or—strike that.

Where did this meeting occur that you are now describing?

A. Outside of my gin, next to the Number 2—1 and 2 gin.

Q. Is it in the Company's plant?

A. Yes. [529]

Q. And was it during working hours?

A. Yes.

Q. Approximately what time of the day?

A. Around 10:00 o'clock.

Trial Examiner Lindsay: You had a motion to strike——

Mr. Painter (Interrupting): Yes, I did.

Trial Examiner Lindsay (Continuing): ——or an objection?

Mr. Painter: I had a motion to strike.

Trial Examiner Lindsay: Motion denied.

Q. (By Mr. Mouritsen): Now, I believe, Mr.

(Testimony of R. K. Martin.)

Martin, you had just told us what Mr. Nichols stated.

Will you continue your description of the meeting from that point?

A. So he tried—Lonnie tried to talk—everybody was trying to talk——

Mr. Painter (Interrupting): Just a minute. The question didn't call for a conversation. I want to urge my objection to any conversation in this meeting as being hearsay, and not binding upon the Respondents and no authorization shown on behalf of anyone to speak for these Respondents.

Trial Examiner Lindsay: The objection is overruled. You may have an exception.

Proceed.

Q. (By Mr. Mouritsen): Give us, as nearly as you can remember, Mr. Martin, what Mr. Spear said and what anyone else [530] said at that time and after that time.

Mr. Painter: The same objection, your Honor, to this question as previously stated.

Trial Examiner Lindsay: He may answer.

The Witness: Mr. Spear tried to explain to them he wasn't——

Mr. Mouritsen (Interrupting): No. Just give us what Mr. Spear said as nearly as you can.

The Witness: He said that we were trying to help everybody, wasn't working against anybody, was trying to keep everybody at work possible.

So they said, "Throw them out. Either throw

(Testimony of R. K. Martin.)

your buttons down and go with us, or we are going to throw you out.”

Q. (By Mr. Mouritsen): Did you recognize any of the individuals in the crowd who made that statement?

A. No, I couldn't say for certain who said that.

Mr. Painter: Mr. Examiner, I want to move to strike that conversation upon the same grounds as I urged.

Trial Examiner Lindsay: Motion denied.

Q. By Mr. Mouritsen: During that time, or at that time, did you hear Mr. Brown make any statement?

A. After he said “Throw them out——”

Q. (Interrupting): Answer that yes or no.

A. Yes.

Mr. Painter: Is Mr. Brown identified?

Mr. Mouritsen: I am going to do that. [531]

Q. Who was Mr. Brown?

A. He is an engineer, one of the natural gas engineers down there.

Q. And is he an employee of the Company?

A. Yes.

Q. Was he at that time?

A. Yes, sir. [532]

Q. Will you state what you heard Mr. Brown, the engineer, say?

Mr. Painter: I object to that on the ground it is hearsay, and not binding upon these defendants, no authorization shown.

(Testimony of R. K. Martin.)

Trial Examiner Lindsay: He may answer.

The Witness: He said, "Throw them out. The company is behind us."

Mr. Painter: I move to strike that on the same grounds.

Trial Examiner Lindsay: The motion is denied.

I am wondering whether it is necessary to make an objection to a question and then at the end of the conclusion of the testimony ask to have it stricken. If you deem it as necessary, then you may do it.

Mr. Painter: Maybe we can enter into some sort of a stipulation.

Trial Examiner Lindsay: No, I am not going to enter into any stipulation. The point is do you preserve your record by making your objection and having granted an exception without the necessity of moving to have it stricken. I believe your record is protected and preserved. However, if you feel it is not, then you may proceed that way.

Q. By Mr. Mouritsen: Now, Mr. Martin will you state what you next saw and observed after Mr. Spear made his statement and you heard these other statements from the crowd? [533]

A. Well, three guys grabbed Mr. Spear and started out with him.

Q. Do you know who those individuals were?

A. Yes, sir.

Q. Will you name them, please?

A. A fellow by the name of Tisdale and Salisbury and John Duncan.

Q. Were they all employees of the J. G. Boswell Company at that time? A. Yes.

(Testimony of R. K. Martin.)

Q. Now, will you continue your description of what occurred at that time?

A. They shoved him out. Mr. Brown, he drew back to—like he was going to hit him.

Q. Is that the way it appeared to you?

A. Yes.

Q. Now continue.

A. So they marched him on out, out the gate.

Q. And was this Mr. Brown the same Mr. Brown whom you identified as an engineer?

A. Yes, sir.

Q. Do you know his first name or initials?

A. No, sir, I don't.

Q. Where did they take Mr. Spear when you last saw them?

A. Over to Mr. Gordon Hammond's office. [534]

Q. Did you yourself proceed to Gordon Hammond's office? A. Yes, sir.

Q. How did you proceed to his office?

A. Just walked on through the warehouse over to the office.

Q. When you arrived in Gordon Hammond's office, did you see a number of other employees there? A. Yes, sir.

Q. Was Mr. Spear and the other three individuals you named, were they present at the office?

A. I think some—part of them was, at least.

Q. Was there also a number of other individuals present in the office? A. Yes, sir.

Q. Will you name as many of those individuals

(Testimony of R. K. Martin.)

as you can recall whom you saw present in the office?

A. Mr. Rube Lloyd, Mr. Nichols, Mr. Bill Robinson. I think that is all I can remember.

Q. Were there more than those? Were there more than five or six men present in Mr. Hammond's office?

A. Not in his office, no, sir.

Q. There were about six or seven men present in his office, is that correct? A. Yes, sir.

Q. Were there other men present in the hall outside of his office? [535] A. Yes, sir.

Q. Approximately how many men?

A. Oh, say 10 or 12.

Q. And where were you? Were you inside Mr. Gordon Hammond's office? A. Yes, sir.

Q. What did you observe and hear while you were present in Mr. Gordon Hammond's office at that time?

Mr. Painter: I will object to that question as calling—it is broad in scope—calling for a conversation by any party, and is hearsay to these defendants, and not binding upon these respondents.

Trial Examiner Lindsay: I understand Mr. Robinson was in the office, is that right?

The Witness: He was in his own office.

Trial Examiner Lindsay: In his own office?

Mr. Painter: This is in Mr. Hammond's office.

Trial Examiner Lindsay: Was Hammond in the office?

The Witness: No, sir.

(Testimony of R. K. Martin.)

Trial Examiner Lindsay: Well, who was in the office?

The Witness: There wasn't anyone in Mr. Hammond's office except the bunch of guys that led Mr. Spear in there and the ones that went with us.

Trial Examiner Lindsay: Who did you see in there?

The Witness: We just waited there for a long time, never [536] did nobody show up with authority, and finally Mr. Robinson put his head out of the door and told us to go back to work, he would be around to straighten it out.

Trial Examiner Lindsay: The testimony may stand.

Q. (By Mr. Mouritsen): And who is Louis T. Robinson?

A. He is general manager of the plant, I suppose. I don't know what he is.

Q. After Mr. Louis T. Robinson made that statement, what next occurred?

A. We went back and started to work.

Q. Where did you go?

A. Went back to my job.

Q. And did you go to work then?

A. No, sir.

Q. What did you do?

A. Well, I offered to go to work, and I said that Bill Robinson—I asked them——

Mr. Painter (Interrupting): I move to strike that, that being hearsay, and not binding on the respondents, and not responsive to the question.

(Testimony of R. K. Martin.)

Trial Examiner Lindsay: He may answer.

The Witness: Bill Robinson said Tom said not to start.

Mr. Painter: Just to clear up the record, I move to strike the entire statement on the same ground.

Trial Examiner Lindsay: The motion is denied.

[537]

Q. (By Mr. Mouritsen): Now, Mr. Hammond—or Mr. Martin, is it a correct statement of your testimony regarding this incident that Mr. Bill Robinson—

Mr. Painter (Interrupting): Just a moment. He is leading his own witness.

Mr. Mouritsen: Mr. Examiner, there has been so many interruptions from counsel that I am sure the record is in a very unclear shape. I think that it is necessary to straighten it out so that the record may be clear and definite on this point.

Trial Examiner Lindsay: I would like it straightened out.

Proceed.

Q. (By Mr. Mouritsen): Mr. Martin, will you state what Mr. Bill Robinson said at that time?

Mr. Painter: Your Honor, I want to object to that again on the ground it is hearsay, no authorization shown, and not binding on these respondents.

Trial Examiner Lindsay: The objection is overruled. Read the question.

(The question referred to was read by the reporter, as set forth above.)

(Testimony of R. K. Martin.)

Mr. Painter: The same objection, your Honor.

Trial Examiner Lindsay: You already have an objection to that question, and I said you may proceed. [538]

Mr. Painter: I take it it is overruled, then?

Mr. Mouritsen: Mr. Examiner, I am surely going to object that counsel for the respondent are surely out of order and that in any other hearing in any other court that these men would have been put out of the hearing or would have been fined for contempt for such action; and I submit it is a highly contemptuous attitude on behalf of respondent's counsel.

Mr. Painter: I think we have a perfect right to enter our objections if we deem they are well taken. That is all we intend to do and that is what we are going to do.

Trial Examiner Lindsay: No one has denied you the right but I feel when an objection has been made to a question and I overrule the objection and I ask that the question be read again to the witness, another objection is not necessary. We must proceed in an orderly way and proceed if I allow the answer to be given.

Certainly, I want everyone to have a chance to have the record preserved, but on the other hand we must proceed in an orderly way and get this testimony into the record.

Now, may I have the last question?

(The question referred to was read by the reporter, as set forth above.)

(Testimony of R. K. Martin.)

The Witness: He said Tommy Hammond said not to start the engines yet.

He said, "What are you going to do? It seems like either [539] the union men run this or the non-union." He said, "They are not going to work with you." He said, "What are you going to do?"

I said, "If Mr. Hammond and Mr. Louie Robinson comes down here and says 'Go home,' all right, but until they do we won't."

Mr. Painter: I move to strike out the conversation, your Honor, on the same grounds.

Trial Examiner Lindsay: The motion is denied. [540]

Q. By Mr. Mouritsen: Did you at that time leave the plant and your gin, Mr. Martin?

A. No, sir.

Q. Did you remain at your gin?

A. Yes, sir, we stood around there for fifteen or twenty minutes, I guess. He asked again, then, what we were going to do.

Q. Who was that? A. Bill Robinson.

Mr. Painter: Just a moment. I move to strike out that conversation.

Trial Examiner Lindsay: He hasn't given the conversation yet. Do you wish an objection shown on the record?

Mr. Painter: Yes, your Honor.

Trial Examiner Lindsay: All right. The objection is overruled, and he may answer.

The Witness: He asked what we were going to

(Testimony of R. K. Martin.)

do and George Andrade was standing there, and he said, "Where is Lonnie? What are we going to do, go home?"

And I said, "I don't know."

We went to the gin where Lonnie was, and a bunch was ganged around him and he was talking to him, and he came in—Bill came in and said, "What are you going to do, Lonnie? It seems as though the boys aren't going to work with you."

Lonnie said, "If that is the way the boys feel about it, [541] we will go home then."

Bill said, "It looks like the thing to do is to get this straightened out."

Q. By Mr. Mouritsen: Who is Bill?

A. Bill Robinson.

Mr. Painter: I move to strike the conversation on the same ground that I urged the objection.

Trial Examiner Lindsay: Motion denied. Proceed.

Q. By Mr. Mouritsen: Who is Lonnie that you referred to? A. L. A. Spear.

Q. After that—strike that.

I believe you stated you have worked in the gins on a number of occasions for the Company in the past; is that right? A. Yes, sir.

Q. Now, just what connection did Bill Robinson have with your work on the gins for the Company?

A. He gave me orders how to gin the cotton, how fast to gin, how tight to have the roll, whether or not to leave remnants in the press box at night.

(Testimony of R. K. Martin.)

Q. Had he ever given you any instructions as to when you were to come to work, or when you were not to come to work?

A. On one occasion he told me to come back one Sunday.

Trial Examiner Lindsay: May I ask a question there?

Did you go back that Sunday? [542]

The Witness: Yes.

Trial Examiner Lindsay: Did you work?

The Witness: Yes.

Trial Examiner Lindsay: Were you paid for it?

The Witness: Yes, sir.

Q. By Mr. Mouritsen: After that conversation you had with Robinson and these other men that you have described, what then did you do?

A. I don't get your question.

Q. Well, as I recall it, you described the conversation that you had where Mr. Spear and Mr. Andrade and Mr. Bill Robinson were present, and there was talk of your continuing to work or not continuing to work; is that correct? A. Yes.

Q. Now, what did you do after that conversation was had? A. We went home.

Q. Do you hold any office in the Union?

A. Yes, sir.

Q. What office?

A. Secretary and Treasurer.

Q. How long have you held that office?

A. Since November 16th, I believe it was.

(Testimony of R. K. Martin.)

Q. Of what year? A. Of 1938.

Q. Did you attend a number of Union meetings in the months of— [543] in the year 1938?

A. Yes, sir.

Q. And have you attended a number of union meetings since that time? A. Yes, sir.

Q. Have you ever been engaged in any picketing of the plant at Corcoran here? A. Yes, sir.

Q. Have you done that on a number of occasions?

A. Yes, sir.

Q. Have you had any employment since November 18th, 1938?

A. Three days, I think—two or three days.

Q. And approximately how much money did you earn during that period?

A. \$19.70, I believe.

Q. And is that all of the money that you have earned by working since November 18th, 1938?

A. Yes, sir.

Q. If the National Labor Relations Board should order your re-instatement with back pay, would you be willing to accept employment with the J. G. Boswell Company? A. Yes, sir.

Mr. Mouritsen: Mr. Examiner, as I outlined at the beginning of the Board's case, we propose to present the evidence collected first against the J. G. Boswell Company, then that [544] that has been gathered regarding the Associated Farmers.

This witness has some evidence, or testimony, that is, that refers to the Associated Farmers. However,

(Testimony of R. K. Martin.)

I think that it would be—We would have a more orderly record if I could be permitted to withdraw this witness and then present him at the time when we present the Board's case against the Associated Farmers, and I wouldn't want to preclude myself from doing that by releasing him at this time without such an understanding.

Mr. Clark: We prefer that it be done that way, Mr. Examiner.

Trial Examiner Lindsay: He may be recalled at a later date. However, if counsel for the Respondent wishes to cross examine him now on the present testimony, he may do so.

Mr. Mouritsen: Yes, that would be preferable, Mr. Examiner, and you may now inquire.

Mr. Clark: The understanding simply is that this witness may be recalled as a witness of the Associated Farmers' case at a later date?

Mr. Mouritsen: That is correct.

Mr. Clark: So stipulated. [545]

Cross Examination

Q. By Mr. Painter: Mr. Martin, I believe I understood your testimony that you quit your job with Boswell Company in 1937 some time around September to take another job with another company. Is that correct? A. Yes, sir.

Q. You took that job, did you not?

A. Yes, sir.

Q. And then some time later after you were

(Testimony of R. K. Martin.)

through working with that job you came back to the Boswell Company, is that correct?

A. I came back and worked two weeks, yes, sir.

Q. And then you quit at the end of two weeks and went back to Colorado, did you not?

A. No, sir.

Q. You went back to Colorado anyway at the end of two weeks? A. Yes, sir.

Q. How long did you stay back there?

A. Oh, about 25 days.

Q. And that was during the summer of 1938, along about April and May, wasn't it?

A. Yes, sir.

Q. And then you asked, did you not, for a job again at the Boswell Company?

A. No, sir. [546]

Q. Don't you recall writing letters from Colorado asking for a job at the Boswell Company?

A. No, sir; no, sir.

Q. Didn't you have friends of yours inquire if you could get a job? A. No, sir.

Q. At any rate, you came back here about the middle of May, didn't you?

A. Yes, sir; about the 17th.

Q. And the mill had been in operation for some time when you got back? A. No, sir.

Q. It had started before you got back, had it not?

A. It wasn't running when I got here, and hadn't for some time before.

(Testimony of R. K. Martin.)

Q. Don't you recall that the mill was running from May 3rd to—I will withdraw that.

What was the date that you got back?

A. 17th, I think, when I went to work.

Mr. Painter: I withdraw the question.

Q. You worked at that time at odd jobs until September 27th, I believe you said?

A. No, sir.

Q. Well, how long did you work?

Mr. Mouritsen: I object to the question as vague and [547] indefinite. It apparently refers to the preceding question which concerned odd jobs and which the witness stated he did not do at that time.

Q. (By Mr. Painter): Well, what did you do when you came back from Colorado?

A. I helped repair machinery in the oil mill.

Q. You did that work up until you left again, isn't that right?

Mr. Mouritsen: Objected to as vague and indefinite.

Q. (By Mr. Painter): Up until the time you quit work again.

Mr. Mouritsen: Objected to as vague and indefinite.

The Witness: I didn't quit any more.

Q. (By Mr. Painter): You stopped work, then. Did you do that type of work up until the time that your work ceased again?

A. Until the mill started. I operated the expeller.

(Testimony of R. K. Martin.)

Q. When did the mill start?

A. Oh, about 30 days after I got back, 20 or 30 days, something like that.

Q. Then your work stopped at the time the mill closed, didn't it? A. Yes, sir.

Q. And do you recall telling Gordon Hammond at that time that you were expecting a job with a firm over at Kingsburg, an oil mill over there? [548]

A. No, sir.

Q. You don't recall asking Gordon Hammond to notify you when the superintendent of that mill let him know that he wanted you?

A. After I was laid off.

Q. I asked you after the mill closed down.

A. Yes, sir.

Q. And you did that, did you?

A. Yes, sir.

Q. And then along about October 6th you were employed once again at Boswell's, weren't you?

Trial Examiner Lindsay: What year was that?

The Witness: 1938.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: 1938 he is talking about, is that right?

Mr. Painter: Yes.

The Witness: I think it was October 10th.

Q. (By Mr. Painter): You worked, then, until the 18th of November? A. Yes, sir.

(Testimony of R. K. Martin.)

Q. Now, Mr. Martin, when did you first meet Mr. Prior?

A. September 2nd, I believe. [549]

Mr. Mouritsen: May we have the year, please?

Q. (By Mr. Painter): What year was that?

A. 1938.

Q. You didn't meet Mr. Prior until you joined the union? A. Yes, sir.

Q. Had you talked over this union with any of the other members before September 2nd?

A. No, sir.

Q. Well, at any rate on September 2nd you joined the union? A. Yes, sir.

Q. You were working at that time at the Boswell plant? A. Yes.

Q. Now, after September 2nd did you take any active part in the organization, that is, the solicitation of members for the union? A. I did.

Q. And you talked with numerous employees of the Boswell plant about joining the union, didn't you? A. Yes, sir.

Q. And then you left the job on September 27th and were re-employed again on October 10th after you joined the union, weren't you?

A. Yes, sir.

Q. You mentioned here that you received a raise on October 10th. That was after you had joined the union, wasn't it? [550] A. Yes, sir.

Q. Did you attend these various meetings that the union held during that summer and fall?

(Testimony of R. K. Martin.)

A. I did.

Q. And you took prospective members with you from the Boswell plant on some occasions, didn't you?

A. Yes, sir.

Q. So it was pretty generally known around the plant by the employees that you were a member of the union, wasn't it?

A. I don't think so.

Q. Well, at least you had talked it over with a lot of them, hadn't you?

A. Some of them; yes, sir.

Q. And you talked it over with quite a number of them before October 10th, hadn't you?

A. Yes, sir.

Q. Now, this conversation you had with, I think it was Tom Hammond, about the union, I believe you testified occurred about September 24th, or 25th?

A. Something like that, about four days before the mill shut down, four or five days.

Q. And that, of course—you were a member of the union at that time?

A. Yes, sir.

Q. And you were re-employed after that time, were you not, [551] on—

Mr. Mouritsen (Interrupting): Objected to as asked and answered at least twice before this time on cross-examination.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Painter): And you got your raise in pay after that time?

(Testimony of R. K. Martin.)

Mr. Mouritsen: Objected to as already asked and answered on cross-examination.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Painter): What gin were you on at the time you walked off the job?

Mr. Mouritsen: Objected to as assuming a fact not in evidence and a misquotation of the evidence already given.

Mr. Painter: I will submit that, your Honor. It seems to me he said he walked off the job.

Trial Examiner Lindsay: Well, I didn't understand your testimony just that way, but he may answer.

Mr. Mouritsen: I will further object to it on the ground it is vague and indefinite, with no definite period of time set.

Trial Examiner Lindsay: Do you know what he means?

The Witness: No.

Mr. Painter: May I have the question read?

Trial Examiner Lindsay: Yes. [552]

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Reframe the question.

Q. (By Mr. Painter): What gin were you working on at the time you left the Boswell plant on November 18th? A. No. 4.

Q. No. 4.

(Testimony of R. K. Martin.)

Now, did you attend a conference with Mr. Gordon Hammond on November 17th at which time Mr. Farr and Mr. Spear and Mr. Prior and yourself were in the office of Mr. Hammond?

A. I did.

Q. At that time—withdraw that.

What time of day did that take place?

A. Between 9:00 and 10:00 o'clock, around 9:00 or 10:00 o'clock.

Q. You were working at that time, were you not?

A. Yes, sir.

Q. Did Mr. Hammond come out and get you from work? A. No, sir.

Q. Someone came out and told you that Mr. Prior was in Mr. Hammond's office and wanted you to come in, did he not? A. Yes, sir.

Q. And you came in? A. Yes, sir.

Q. All right. [553]

Do you recall at that time—withdraw that question.

Were you here during the testimony of Mr. Prior?

A. Part of the time, not all of the time. [554]

Q. Were you here this morning during his testimony? A. Yes, sir.

Q. Was his description of what occurred at that meeting with Mr. Hammond on November 17th in accordance with your recollection of it?

Mr. Mouritsen: That is objected to as an objectionable question, calling not for this witness's recollection of any occurrence but for his recollection of the testimony of another witness.

(Testimony of R. K. Martin.)

Mr. Painter: The recollection of the facts stated by another witness.

Trial Examiner Lindsay: Well, ordinarily the question is all right, but I would rather have you go into it the other way, if you wish.

Mr. Painter: I don't want to go into everything that was gone over this morning, but there are a few facts that I will go into.

I would like to have his answer to that question, if the Examiner please.

Trial Examiner Lindsay: He may answer.

The Witness: What was the question?

(The record referred to was read by the reporter, as set forth above.)

The Witness: Yes, it is pretty much the same as I could give it. [555]

Mr. Clark: Does your Honor want to take the afternoon recess? It is 3:00 o'clock. May I ask for it at this time?

Trial Examiner Lindsay: Yes, if you really need it.

We will have a ten minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Lindsay: Hearing called to order.

Mr. Painter: Shall I proceed?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Painter): Mr. Martin, the night be-

(Testimony of R. K. Martin.)

fore that meeting, that conversation in the office, whichever office it was, with Mr. Hammond, that is on the night of November 16th you held a Union meeting, did you not? A. Yes, sir.

Q. In other words, to discuss—withdraw that.

In other words, you held a meeting the night before you went into the office to talk with Gordon Hammond? A. Yes, sir.

Q. Now, can you tell me who was present at that meeting?

A. Well, O. L. Farr, W. R. Johnston, E. C. Ely, B. L. Ely, L. E. Ely, George Andrade—I believe that is all I can name.

Q. Those are all the people there that you can remember; is that correct? A. Yes, sir.

Q. You are Secretary of the Union, are you not? [556]

A. Yes, sir.

Q. Do you keep a record of the people in attendance at the meetings? A. I do.

Q. Have you that record with you?

A. No, sir.

Q. Will you arrange to produce that record here at some convenient time, of the members that were there and participated at the meeting?

Mr. Mouritsen: I would object to the introduction of this testimony or such record upon the ground they are incompetent, irrelevant and immaterial.

Mr. Painter: It is certainly competent, I believe,

(Testimony of R. K. Martin.)

if I may state my position, Mr. Examiner.

It is certainly competent to get the identity of all parties present at these various events. That is the purpose of my request.

Trial Examiner Lindsay: Well, I understand that the records of the Union are the Union records. The objection is sustained.

Q. (By Mr. Painter): May I ask you how many people were present at that meeting?

A. Some eighteen or twenty.

Q. Well, I want you to think again. Can you recall anybody other than these people you have named that were present at that [557] meeting?

Mr. Mouritsen: That has already been asked and answered. I object to it on that ground.

Trial Examiner Lindsay: He may answer if he knows anyone else.

The Witness: Walt Winslow, Lonnie Spear, Elmer Eller. That is all I can remember.

Q. (By Mr. Painter): Those are all of them that you can remember? A. Yes, sir.

Q. Now, of those people present at that meeting, were they all members of your Union?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial, not tending to prove or disprove the issues in the case.

Trial Examiner Lindsay: Sustained.

Mr. Painter: All right.

Q. Now, going to the meeting, the conference with Mr. Hammond in the office on November 17th,

(Testimony of R. K. Martin.)

do you recall a discussion in there relative to the reduction in the number of hours worked by each of the men as mentioned by Mr. Prior here in his testimony? A. Yes, sir.

Q. And it was suggested, was it not, by you men who represented the Union, that a reduction be made? Is that correct? [558]

A. Yes, sir, that suggestion was made.

Q. You suggested, did you not, reducing the time—that is, it was suggested by someone of you Union representatives, that the number of working hours should be reduced to eight?

A. No, sir.

Q. Well, it should be reduced, anyhow, to spread out, divide up the work? A. Yes, sir.

Q. Now, you had another Union meeting that night, did you not?

A. I don't remember whether we did or not, the 17th.

Q. You don't recall having a meeting that night?

A. No, sir.

Q. Did you hear Mr. Prior's testimony this morning that you did have a meeting that night?

A. I don't remember.

Q. At any rate, the following day, the 18th—I withdraw that question.

At any rate, instructions were received by you and the other men on the night of the 17th that the gins would run a shorter length of time the following day, weren't there?

(Testimony of R. K. Martin.)

A. No, sir, not me—

Mr. Mouritsen (Interrupting): Objected to as vague and indefinite.

Mr. Painter: All right. [559]

Q. What time did your gin start?

Trial Examiner Lindsay: Just a moment. Your objection came too late. The answer is in.

Mr. Mouritsen: May it please the Examiner, if that is the case, I move to strike the answer for the purpose of interposing the objection which will be that the question is too vague and indefinite.

Trial Examiner Lindsay: Let us be more specific on these matters.

Mr. Painter: May I have the question re-read?

Trial Examiner Lindsay: Yes. Reframe your question. Read it, please?

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Painter): Either on the night of the 17th or the morning of the 18th instructions were received by you that the gins would run short hours on that day; isn't that correct?

A. No, sir.

Q. What time did your gin open on the morning of the 18th? A. Seven o'clock.

Q. The other gin didn't open at that time, did it? A. No, sir.

Q. That gin was to be opened at 10:00 o'clock?

Mr. Mouritsen: Objected to as vague and indefinite.

(Testimony of R. K. Martin.)

Trial Examiner Lindsay: He may tell, if he knows, when it [560] was opened, regardless of whether it was to be or was not to be.

When was it opened? He may answer.

The Witness: I understood it was to be, but it never got started.

Q. (By Mr. Painter): All right.

Now, on the 18th, I mean on the 17th of November, both of the gins opened at the same time, didn't they?

A. They was two of the gins that did, yes, sir.

Q. So that there was, in fact, a change in the running time on the 18th of November?

A. Yes, sir.

Q. And that is the day that you and these other men left the Boswell plant?

A. That is the morning we was forced off.

Q. Now, after you went into the office and Mr. Louie Robinson instructed all the men to go back to work, you went back out to the plant, did you not, out to the gin? A. Yes, sir. [561]

Q. And I believe you stated something in your direct examination to the effect that if Mr. Gordon Hammond or Mr. Louie Robinson told you to go home, you would go home? Is that right?

A. Yes, sir.

Q. In other words—well, just state in your own words, what you said.

A. To Bill Robinson?

Q. Yes.

(Testimony of R. K. Martin.)

A. He asked what we were going to do. I told him that we would go home——

Q. (Interrupting): Let us just have what you said.

Trial Examiner Lindsay: That is what he is telling you.

The Witness: That we would go home if Mr. Hammond or Louie Robinson said to go home.

He said, "They won't do that. They are not going to work with you. It is just going to be a racket. You are even going to have to run it yourself, you union men, or you are going to have to let the non-union men run it. You are going to have to get out"——

Mr. Painter (Interrupting): Just a minute, your Honor. All I requested is what this gentleman said himself and consequently I move to strike out all the remaining portion of his answer as not responsive.

Trial Examiner Lindsay: It may be stricken.

[562]

Q. (By Mr. Painter): When you mentioned Mr. Hammond, you referred to Mr. Gordon Hammond, did you not? A. Yes, sir.

Q. All right.

Now, when you went out to the plant after you had been into Mr. Hammond's office on the morning of the 18th, you couldn't get the men to work with you, is that right?

A. I guess that is right.

(Testimony of R. K. Martin.)

Mr. Mouritsen: Objected to as incompetent.

Q. (By Mr. Painter): Let—

Trial Examiner Lindsay (Interrupting): Just a moment. I think in view of the evidence that has been presented here that your question should be re-framed.

Mr. Painter: Let me put it this way.

Q. The men wouldn't work with you then when you went out, back to the gin after being in Mr. Hammond's office that morning?

A. Bill Robinson said they wouldn't.

Q. Well, the men weren't coming around there to work in the gins with you, isn't that a fact?

A. The gins wouldn't start; they wouldn't start the motors.

Q. You were there, weren't you? A. Yes.

Q. But the men wouldn't come to work?

A. They wouldn't start the engines, start the machinery. [563]

Q. The other employees then in the plant wouldn't assist you in running the gin, is that right?

A. The engineer wouldn't start the engine.

Q. All right.

Now, I believe then after a matter of 15 or 20 minutes you and some of the other men took your coats and went home, is that right?

A. We did after we went over and had a conference with the president.

Q. Mr. Spear is the president?

(Testimony of R. K. Martin.)

A. Yes, sir.

Q. You didn't go back in to see Mr. Louis Robinson before you left the plant, did you?

A. No, sir.

Q. You left directly then from the plant without going to see—I will withdraw that question.

You left directly from the gin to your home, is that right? A. Yes, sir.

Q. Now, were you in this conference with Mr. Louie Robinson on the 19th, the day after this happened? A. Yes, sir.

Q. And did you hear Mr. Prior's testimony to the substance of the conversation that took place at that time?

A. If he testified this morning, I did. [564]

Q. Yes, this morning.

A. Well, I heard it.

Q. And was his version of what occurred there in accordance with your recollection of what happened? A. Yes, sir.

Q. Then you heard, did you not, Mr. Martin, you heard Mr. Prior suggest to Mr. Robinson that the men be put back to work stacking and restacking, tearing down and stacking cakes in the warehouse?

Mr. Mouritsen: I object to that, Mr. Examiner, as a misstatement of the evidence given by the preceding witness Prior in that he explained that that was merely an example that he used in outlining his position.

(Testimony of R. K. Martin.)

Trial Examiner Lindsay: Yes.

Mr. Painter: I will change the question.

Q. You heard Mr. Prior do some talking, at least, to Mr. Hammond, about putting men to work tearing down stacks of cake and stacking them up again, did you not?

A. I don't recall that.

Q. You don't recall that? A. No, sir.

Q. Now, were you present in the office of Mr. Robinson during a conversation that occurred on November 28th?

A. I think I was.

Mr. Mouritsen: Was that 1938? [565]

Mr. Painter: 1938.

Q. And did you hear Mr. Prior's testimony this morning regarding that? A. Yes, sir.

Q. And you heard his testimony regarding the fact that if all the men weren't going to be put back to work that none of them should be put to work, is that correct?

A. I don't remember just them words.

Trial Examiner Lindsay: Just a moment. His testimony was not that this morning. His testimony was that he said that if they weren't going to be put back to work that there was no use of further discussing the matter. That was his exact words.

Mr. Painter: You heard that, did you not?

The Witness: Yes, sir.

(Testimony of R. K. Martin.)

Q. (By Mr. Painter): When you want to go to work—I will withdraw that question.

After that time did you ever apply for work at the Boswell plant? A. No, sir.

Q. Now, after you left on the 18th, you received checks in payment—you received regular paychecks for a time after that, did you not?

A. I received two checks but they wasn't regular pay according to the way I had been working.

[566]

Mr. Painter: May I have Board's Exhibit 3?

(The document referred to was passed to Mr. Painter.)

Mr. Mouritsen: I think, Mr. Counsel, that Mr. Martin's page or name is not in there. We have examined it.

Mr. Painter: It is in here some place because I saw it the other night.

(Examining document) Here is R. K. Martin.

Q. According to these check stubs which you have in your possession, Mr. Martin, and according to Board's Exhibit 3, you received a check on the 17th, that was the day before you left, did you not, the 17th of November?

A. I received it on Saturday.

Trial Examiner Lindsay: I think you are mistaken there. The check, as I understand it, wasn't delivered on the day that they left, or on the 17th either.

Is that right?

(Testimony of R. K. Martin.)

The Witness: That is right.

Trial Examiner Lindsay: But that it covered the payment up to the 17th.

Mr. Painter: All right. We will revise that.

Q. You received a check at any rate covering your payment for work done up to and including the 17th? You received that check, did you not?

A. Yes, sir. [567]

Q. And another check covering the week up to and including the 24th of November, 1938?

A. Yes, sir, a partial check.

Q. That was for \$29.00? A. Yes, sir.

Q. And a check covering the week up to and ending December 1? A. Yes, sir.

Q. 1938? A. Yes.

Trial Examiner Lindsay: How much was that check for?

Mr. Painter: That check was for \$9.00.

Q. Now, you, in fact, didn't do any work there at the plant after November 18th, did you?

A. No, sir.

Mr. Painter: That is all.

Mr. Mouritsen: Is that all?

Mr. Painter: That is all.

Redirect Examination

Q. (By Mr. Mouritsen): Now, Mr. Martin, I believe you testified on cross that you came back to work for the Company in April or May of 1938, is that correct? A. Yes, sir.

(Testimony of R. K. Martin.)

Q. Were you notified to come back to work at that time? A. Yes, sir. [568]

Q. How were you so notified?

A. A letter from Mr. Gordon Hammond's nephew.

Q. Who is that? A. Kelly Hammond.

Q. And what did the letter say, in substance?

Mr. Painter: I will object to this as not the best evidence.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Mouritsen): Do you have that letter available? A. No, sir, I haven't.

Q. Do you know, has it been kept?

A. I thought it had, but I couldn't find it.

Q. You have made a search for it and have not been able to find it? A. Yes.

Q. Will you state what the substance of the letter was?

Mr. Painter: The same objection, your Honor.

Trial Examiner Lindsay: I will ask a question or two.

Where did you make a search for that letter?

The Witness: At home.

Trial Examiner Lindsay: In what part of your home did you make the search for it?

The Witness: Well, most every place there that the letter is liable to be left.

Trial Examiner Lindsay: And any letters you do keep you [569] usually keep in your home here, is that right?

(Testimony of R. K. Martin.)

The Witness: Yes.

Trial Examiner Lindsay: And after having made that search in your home here, you could not find the letter, is that right?

The Witness: Yes, sir.

Mr. Painter: I also object on the ground it is hearsay, no foundation laid, and no authorization shown, and that it is not binding upon any of these Respondents.

Trial Examiner Lindsay: Well, after you got that letter, did you return to work?

The Witness: Yes, sir.

Trial Examiner Lindsay: And you were paid for the work you did after you returned?

The Witness: Yes, sir.

Trial Examiner Lindsay: He may answer. You may have an exception.

The Witness: The letter stated that Mr. Hammond told him to write and tell me that just as well if I come back home, that he intended to give me a night operator's job over the expellers and Nick Thompson's place in the first place; that he looked for me to put me to work about a week after I left going back to Colorado.

Q. (By Mr. Mouritsen): And after that time did you return to Corcoran? [570]

A. Yes, sir.

Q. Did you go to work at the Boswell plant?

A. Yes, sir.

(Testimony of R. K. Martin.)

Q. Did you go to work as the night operator, as outlined in the letter you had received?

A. Not until about thirty days. Nick Thompson was still here. Julius Hammond, the foreman, told me after that—

Mr. Painter (Interrupting): Just a moment. I will object to the conversation as not being binding upon these Respondents, and is hearsay and no proper foundation laid.

Trial Examiner Lindsay: May I have the last part of the answer?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: He may answer. Continue.

The Witness: After he had gone back to Arizona, that I was to take that job.

Q. (By Mr. Mouritsen): Did you approximately, 25 or 30 days after you returned, take the position of night expeller? A. Yes.

Q. Now, Mr. Martin, how many gins are there at the Corcoran plant? A. Six.

Q. Now, directing your attention to the conversation that you had—no, strike that. [571]

Directing your attention to the statement that Mr. Louis T. Robinson made while you were in Gordon Hammond's office on November 18th, 1938, will you repeat that statement?

Mr. Painter: Just a moment. I will object to

(Testimony of R. K. Martin.)

this as having been asked and answered, and was not touched upon on the cross examination.

Mr. Mouritsen: I will reframe it.

Q. Do you have that statement in mind, Mr. Martin? A. Yes, sir.

Trial Examiner Lindsay: Just a moment, now.

As I recall it, he attempted to give the answer, and you did not receive it. The objection is overruled. He may answer.

Mr. Painter: Pardon me, Mr. Examiner. Maybe I misunderstood the question.

May I have the question re-read?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Painter: I will stand on my objection.

Trial Examiner Lindsay: You may answer.

The Witness: Mr. Robinson said, "Go on back and go to work, boys. I will be around in a few minutes and straighten this out."

Q. (By Mr. Mouritsen) I believe you testified you did go back [572] to work? A. Yes, sir.

Trial Examiner Lindsay: He said he went back and attempted to go to work, in his testimony.

Mr. Mouritsen: I accept the correction, Mr. Examiner.

Q. You went back to your gin, is that correct?

A. Yes, sir.

Q. And you waited there approximately 20 minutes, is that correct? A. Yes, sir.

(Testimony of R. K. Martin.)

Q. During that 20 minutes, did Mr. Robinson come out to the gin? A. No, sir.

Q. Did he, during that period, straighten the thing out? A. No, sir.

Q. Where did you go after you left the Boswell plant on that morning?

A. We went home.

Q. Did you go to the home of O. L. Farr before you went home? A. Yes, sir.

Q. Were you present while Mr. Farr made a telephone call? A. Yes, sir.

Q. Do you know to whom that telephone call was made? A. Mr. Louie Robinson. [573]

Q. Were you present when Mr. Farr testified regarding that conversation? A. No, sir.

Q. Did Mr. Farr make any statement to you after he had had the telephone conversation with Mr. Robinson? A. Yes, sir.

Mr. Painter: Just a moment. I will object to that. He hasn't called for the statement.

Trial Examiner Lindsay: He may answer.

The Witness: Yes, sir. [574]

Q. (By Mr. Mouritsen): Will you repeat what Mr. O. L. Farr said to you on that occasion?

Mr. Painter: I object to this question on the ground it calls for hearsay, not binding on the respondents in any manner.

Trial Examiner Lindsay: He may answer.

The Witness: He said that Mr. Robinson said to rest easy, or something to that effect, for a while

(Testimony of R. K. Martin.)

and not to do anything yet, that he was working on it as fast as he could to try to get it straightened out.

Q. (By Mr. Mouritsen): On cross-examination I believe you testified that after November 28, 1938, you did not again apply for employment with the J. G. Boswell Company, is that correct?

A. Yes, sir.

Q. Did you have any reason for that, for not applying for employment after that time?

A. Yes, sir.

Mr. Painter: Just a moment. I will object to the question as incompetent, irrelevant and immaterial; what his reasons were.

Trial Examiner Lindsay: He may state his reason.

Q. (By Mr. Mouritsen): What was your reason?

Mr. Painter: The same objection, your Honor.

Trial Examiner Lindsay: He may state his reason. [575]

The Witness: Mr. Robinson told us the morning of the first conversation in his office that after Mr. Prior asked to put us to work he said, "Well, we will feel the men out and get the sentiment of the men and let them know right away."

Mr. Prior mentioned that we was in a hurry about it and we deserved work as much as the other men out there. They said, "Well, go on home. Don't worry about time. We will let you know when we get ready for you. Just rest easy."

Q. (By Mr. Mouritsen): After that—can you fix

(Testimony of R. K. Martin.)

approximately the date of that conversation or conference? A. That was the 19th.

Q. Of what month and what year?

A. November 19, 1938.

Q. Now, after that time did Mr. Louis T. Robinson ever notify you to come back to work?

A. No, sir.

Q. Do you have the stubs of your checks that you received on November 10th and—no, for the week ending November 10, 1938, and for the week ending November 17, 1938? A. Yes, sir.

Q. What do those stubs show that you received for work for the week ending November 10, 1938?

Mr. Clark: Let us check them in the exhibit so we may be sure there is no discrepancy.

Trial Examiner Lindsay: You may see the two he asked for. [576]

The Witness: \$36.

Trial Examiner Lindsay: Do you want to see them?

Mr. Clark: No, I will check the amounts in here (Indicating record book).

Trial Examiner Lindsay: Which one are you reading from now, Mr. Witness?

The Witness: November 10th.

Trial Examiner Lindsay: All right.

Mr. Clark: Just a minute, please, Mr. Examiner.

Trial Examiner Lindsay: All right.

Mr. Clark: All right.

The Witness: \$36.

(Testimony of R. K. Martin.)

Q. (By Mr. Mouritsen): And for the week ending November 17, 1938?

A. (Examining stubs) November 17th, \$32.

Trial Examiner Lindsay: The total is \$32 and the total earned on the other one is \$36, and out of that are some deductions for social security. Is that right?

The Witness: Yes, sir.

Mr. Clark: Are you going into these other two?

Mr. Mouritsen: No. I think that will cover it.

Mr. Clark: I see.

Trial Examiner Lindsay: Will you want to see these stubs?

Mr. Clark: No, no. [577]

Q. (By Mr. Mouritsen): I believe you stated that after November 19, 1939, Mr. Louis T. Robinson never notified you to come back to work, is that correct? A. No, sir.

Q. Did anyone else ever notify you to come back to work? A. No, sir.

Mr. Mouritsen: You may inquire.

Recross Examination

Q. (By Mr. Painter): Mr. Martin, did you discuss this matter at all, this matter of the statement made by Mr. Robinson on the 18th with anyone during the recess? A. No, sir.

Q. Did you talk at all with any of the attorneys for the Board? A. No, sir.

Q. Or with Mr. Prior? A. No, sir.

(Testimony of R. K. Martin.)

Q. What revived your memory as to what was said in that during the recess?

A. I wasn't asked the question before.

Q. Don't you recall testifying to that fact in your direct examination?

A. No, sir.

Q. You have no recollection of stating what Mr. Robinson said on the morning of the 18th? [578]

A. Oh, the morning of the 18th, yes, sir.

Q. Do you recall testifying to that in your direct examination?

A. I sure did.

Q. Well, what changed your mind during the recess to alter that statement after you got back in here?

A. What statement?

Q. As to what Mr. Robinson said.

A. I told the same thing, the same statement.

Q. And you discussed it with no one?

A. Yes, sir.

Mr. Painter: Just so it is clear in the record.

Q. Mr. Martin, from September, 1937 to April of 1938, you were away from the Boswell plant, isn't that correct?

A. From September until when?

Q. September of 1937 until April of 1938.

A. Yes, sir.

Q. And at that time you were on another job?

A. Yes, sir.

Q. And then you were away from March to the middle of May, 1938?

Mr. Mouritsen: I object to that.

Trial Examiner Lindsay: Just a minute. Your questions are not stating the evidence.

(Testimony of R. K. Martin.)

Mr. Painter: I am asking him, Mr. Examiner. [579]

Trial Examiner Lindsay: I know. The way you put your question he can't answer yes or no.

First of all, his testimony was that he came back in March after having been off and worked for some other company and he worked for approximately two weeks and was laid off and *when* down to Colorado and came back and went to work on the 17th of May, 1938.

Mr. Painter: Yes, that is what I wanted to get.

Trial Examiner Lindsay: Read the question and you will see that your question is wrong.

Mr. Painter: I will reframe it and save time.

Q. You were also away from the Boswell plant from about some time in March until about the middle of May, is that right? A. Yes, sir.

Mr. Painter: That is all.

Mr. Mouritsen: Nothing further.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Mr. Mouritsen: Call Mr. E. C. Powell.

EVAN C. POWELL

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows: [580]

(Testimony of Evan C. Powell.)

Direct Examination

Q. (By Mr. Mouritsen) What is your name?

A. Powell, Evan C. Powell, E. C.

Q. How do you spell that first name?

A. E-v-a-n.

Q. Are you some times known as E. C. Powell?

A. Yes, sir.

Mr. Mouritsen: Will it be stipulated this is the gentleman referred to in the complaint as E. C. Powell?

Mr. Painter: Isn't that his name?

Trial Examiner Lindsay: Just a moment. If the complaint calls for a name and the full initials aren't given, and it is proved this is the same individual, I suggest you make a motion to amend the complaint to conform to the proof, if that is a fact.

Q. (By Mr. Mouritsen) Where do you reside?

A. 1140 Norvoe, Corcoran, California.

Mr. Mouritsen: Keep your voice up, Mr. Powell.

Q. Have you ever been employed by the J. G. Boswell Company? A. Yes, sir.

Q. When were you first employed by that company?

A. In the latter part of August, '36.

Q. What type of work did you start to do for the company?

A. Just general work, clean-up and odd jobs at that parti- [581] cular time.

Q. What rate of pay did you receive at first.

A. 35 cents.

(Testimony of Evan C. Powell.)

Q. And what hours did you work?

A. 12 hours.

Q. How many days a week? A. 7 days.

Q. How long did you continue to do general work for the company?

A. Just a short while until the ginning season opened in September some time.

Q. The last of September some time, you say?

A. In September some time.

Q. And the year was 1936, is that right?

A. That is right.

Q. Then what did you start to do?

A. On the press, the cotton press.

Q. And what type of work did you do on the cotton press? A. Tying up cotton.

Q. Did you receive any raise in pay or any change in your hours of work? A. No.

Q. How long did you continue to do that?

A. Just a short while, a few days.

Q. Then what did you do? [582]

A. An engineer's job, running the engines for the gin power, that is the smaller gins, that operate the gins.

Q. And how long did you continue to do that type of work? A. A few days, just a few days.

Q. Then what did you do?

A. I took the main engine plant, at the main power plant, over in the main engine room.

Q. What did you do? Operate the engines?

A. Operated the engines.

(Testimony of Evan C. Powell.)

Q. How long did you continue that type of work?

A. Something over a year.

Q. Yes.

Then what type of work did you next do?

A. The next type of work I did was back to the gin.

Q. And what work did you do in the gin?

A. Tying up cotton.

Q. And how long did you continue to do that work? A. Just a short while, a week or so.

Q. Then what work did you do?

A. Well, I was injured at that time.

Trial Examiner Lindsay: I didn't get that.

The Witness: I was injured. I received an injury.

Mr. Clark: What date?

Q. (By Mr. Mouritsen) What was the approximate date of your injury? [583]

A. September 27th.

Q. What year? A. '37.

Q. 1937? A. Yes, sir.

Q. And how long were you off with your injury at that time?

A. Well, something about two months.

Q. Then, did you go back to work for the company? A. I did.

Q. What would that be? About November or December of '37? A. About that time, yes.

Q. And what type of work did you do when you went back?

(Testimony of Evan C. Powell.)

A. I went back and worked on the gin for the short while and did odd jobs.

Q. And how long did you continue that type of work? A. Just a few weeks as I recall it.

Q. Yes.

When were you last employed by the J. G. Boswell Company? A. When was I last employed?

Q. Yes. A. November 18, 1938. [584]

Q. Now, from August of 1936 until November 18th, 1938, other than the two months that you were off with an injury, did you work steadily for the Company?

Mr. Clark: May I have that question re-read, your Honor?

Trial Examiner Lindsay: Yes, read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: No, I was off about six months at that time.

Q. (By Mr. Mouritsen): And when was that period that you were out?

A. The Fall, in around January of '38.

Q. And until what time in '38?

A. July 3, 1938.

Q. Yes.

Now, during the time that you employed by the Boswell Company, did you ever receive any increase in pay? A. Never.

(Testimony of Evan C. Powell.)

Q. During the year 1938, did you ever have any conversation with Gordon Hammond relative to obtaining certain information for him?

A. Yes.

Q. When did that conversation occur?

A. Along November 1, about the 6th, on about the 6th, I believe. [585]

Mr. Mouritsen: What was that, Mr. Reporter?

(The answer referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen): And where did this conversation with Gordon Hammond take place?

A. In the warehouse where the material is stored, in the main warehouse.

Q. Will you keep your voice up? I can't quite hear you.

Was anyone else present other than you and Gordon Hammond? A. No, there wasn't.

Q. Will you state at this—strike that.

What position did Mr. Gordon Hammond hold with J. G. Boswell Company at that time?

A. He is the supervisor over production works at the plant.

Q. Supervising of production and work, did you say? A. Of works, of the plant.

Mr. Clark: I don't think he said production, Mr. Examiner. Let us have the answer as given by the witness.

Trial Examiner Lindsay: Does he now hold the same job that he held then?

(Testimony of Evan C. Powell.)

The Witness: To my knowledge he does.

Q. (By Mr. Mouritsen): This conversation took place where?

A. In the main warehouse.

Q. Is that in the Boswell plant?

A. In the Boswell plant. [586]

Q. Now, will you state what Mr. Gordon Hammond said to you at that time, and what you said to Mr. Gordon Hammond?

A. Well, he came around and said, “‘Coon’”—I am known as “‘Coon’”—he says “‘Coon’”, he says, “‘Coon’, I hear the Union is coming in and trying to organize the boys.”

And he says, “I don’t know how you feel about it, whether you are for the Union or not, but I do know as long as you don’t have anything to do with it that you will have a job here as long as you want to.”

And he says, “I learned some information about who the leaders are of this, and if I can get that, why, there might be some scare could be put in them and get rid of them.”

And he says, “Can you get that information?”

And I said, “It could be obtained, yes.”

He said, “Get in on one of their meetings and find out who their leaders are, and who is in it, and let me know.”

And I then told him it was a pretty serious matter, and what consideration I might receive for such information, that I had been getting 35 cents an

(Testimony of Evan C. Powell.)

hour for the time I had been working there, and it was very difficult to make all ends meet on that rate of pay. And I mentioned I was in some debt at that time.

And he said, "Well, we can fix that up all right."

Q. Did you have any further conversation at that time? A. Not that I recall. [587]

Q. Do you recall whether or not at that conversation anything was said regarding an obligation you were under to Mr. Gordon Hammond?

A. Yes, I do.

Q. Will you state what was said regarding an obligation to Mr. Gordon Hammond at that conversation?

A. I told Mr. Hammond for the consideration of money that I wouldn't be interested, but for obligations I was under to him on a previous matter, I would do what I said.

Q. And to what obligation did you refer at that time?

A. Well, I had issued a check that Mr. Hammond had endorsed, and befriended my family when I was in trouble, during the time I was in trouble over this check.

Q. And because of that obligation, were you imprisoned for a time? A. I was.

Q. And where did that take place?

A. Where was I imprisoned?

Q. Yes.

A. In Hanford, Kings County, up here.

(Testimony of Evan C. Powell.)

Q. Was that in the County Jail at Hanford?

A. That is right.

Correction?

Trial Examiner Lindsay: Yes.

The Witness: This—not for this check that I had en- [588] dorsed, but for another check that I was given the time on. I did no time for the check he had endorsed.

Q. (By Mr. Mouritsen) Had he—strike that.

With reference to the check that he had endorsed, what occurred with respect to the payment of that check?

A. He took the check up and I paid it back out of my salary.

Q. Now, after that time, did you have any further conversation with Mr. Gordon Hammond relative to furnishing him information about the Union or Union members at the plant? A. Yes.

Q. When next did you have such a conversation?

A. Well, I talked with him about it every other day, but at one time—

Q. (Interrupting) Can we fix that time more definitely? Can you give us the approximate date?

A. About the 9th, on or about the 9th, I recall.

Q. Of what month? A. November.

Q. And the year? A. '38. [589]

Q. Now, where did this next conversation take place with Mr. Gordon Hammond?

A. In the warehouse.

Q. Was anyone else present? A. No.

(Testimony of Evan C. Powell.)

Q. Will you state what you said at that time to Mr. Gordon Hammond and what he said to you?

A. I told him that I had been in on one of the meetings and told him the president and secretary and treasurer and vice-president, and the office of the union, the ones that were present there.

Q. Well, will you state the names of those people—strike that.

Did you state to Mr. Gordon Hammond the names of the people who held those offices?

A. I did.

Q. Will you state the names that you gave to Mr. Gordon Hammond on that occasion?

Mr. Clark: May I have the date of this, please?

Trial Examiner Lindsay: This is the 9th, as I understand it.

Mr. Clark: Of November.

Trial Examiner Lindsay: 1938.

Q. (By Mr. Mouritsen) Will you state the names of those officers that you named to Mr. Gordon Hammond? [590]

A. I told him Mr. Lonnie Spear was president, Mr. O. L. Farr was the vice president, Mr. R. K. Martin was secretary and treasurer, and I mentioned others present.

Q. Did you name their names to him?

A. I did.

Q. Will you state all of the names that you can recall that you named to him as being present at that meeting?

(Testimony of Evan C. Powell.)

A. Other than the ones I have mentioned, George Andrade, Elgin Ely, Steve Griffin, Pete Wingo, and Johnston—I do not know his initials. I do not know Johnston's initials—but Johnston, anyway, and Joe Briley, Boyd Ely, and myself.

Q. Was that—do you recall any further conversation that you had with Mr. Gordon Hammond at that time?

A. Well, I mentioned that I was in that meeting and found those present there, but when the business end of the meeting came up, I had to be dismissed, not being a member at that time; and I couldn't get anything further in that. And I believe that I mentioned that there was a charter. I have seen a charter of the American Federation of Labor that was installed that night.

Q. Now, Mr. Powell, previous witnesses have testified that a meeting of the union was held at which a charter was installed on or about November, 1938.

If I tell you that the date of the charter meeting was November 5, 1938, how long afterwards did this conversation that you had with Gordon that you have just discussed take [591] place?

A. After the meeting of the 5th?

Q. No, after the charter meeting, a meeting of the union at which the charter was installed. How long after this conversation that you had with Gordon Hammond take place?

A. (Pause)

(Testimony of Evan C. Powell.)

Trial Examiner Lindsay: Do you understand the question?

The Witness: I do not understand it.

Q. (By Mr. Mouritsen) I believe you have testified that you attended a meeting of the union at which a charter was installed, is that correct?

A. I did.

Q. Now, how long after you attended that meeting did you have a conversation with Mr. Gordon Hammond that you have described?

A. It was the next day I was telling him about the charter, or the next morning.

Q. Okay.

Now, after that conversation, did you have any further conversation with Mr. Gordon Hammond with reference to the union or its members?

A. Yes.

Q. When—strike that.

How long after the conversation that you have just des- [592] cribed did the next conversation take place?

A. The next morning after the meeting at Farr's.

Q. Well, is there any way that you can fix approximately the date of the meeting at Farr's?

A. That was on or about November 16th, because I had signed—I had filed an application and, well, was initiated on the night of November 16th.

Q. Now, where did this conversation with Mr. Gordon Hammond take place?

(Testimony of Evan C. Powell.)

A. Just to the back of the warehouse, the warehouse and 1 and 2 gin.

Q. And was anyone else present at that time?

A. No one.

Q. Will you state what was said to Mr. Gordon Hammond and what he said to you on that occasion?

A. Well, we talked about any new members coming in, just in general, about negotiations we had been making.

Q. At that time did you tell him the names of any new members who came in?

A. Yes.

Q. Will you state the names that you gave to Mr. Gordon Hammond as being new members of the union on that occasion?

A. I told him Mr. Johnston, Mr. Elgin Ely, and Steve Griffin and myself had joined the union.

Q. What—strike that. [593]

Was any further conversation had at that time between yourself and Mr. Hammond?

A. Not that I recall.

Q. Now, directing your attention to that meeting, the union meeting of the night before, about which you talked with Mr. Hammond, did a number of other employees of the company become members of the union at that time?

Mr. Clark: That is the night of the 16th, the night of November 16th?

Mr. Mouritsen: Yes.

(Testimony of Evan C. Powell.)

The Witness: Yes.

Q. (By Mr. Mouritsen) Now, I believe you stated——

Mr. Clark (Interrupting): I think the witness only nodded, Mr. Examiner.

The Witness: I said "Yes."

Mr. Clark: All right.

Q. (By Mr. Mouritsen) And I believe you stated that you yourself were initiated at that time, is that correct? A. Yes, sir.

Q. Will you name the other employees who became members at that time?

A. Elgin Ely, Johnston, and myself.

Q. Do you recall whether or not at that time a Mr. Winslow became a member of the union?

A. Wingo? No. [594]

Q. Winslow, not Wingo.

A. Yes, Walt Winslow.

Mr. Clark: Walt?

The Witness: Yes, Walt or Walter.

Q. (By Mr. Mouritsen) Now, directing your attention back to your conversation with Gordon Hammond the next day, I will ask you did you at that time tell Mr. Gordon Hammond that Walt Winslow became a member of the union on the night before? A. I did.

Q. On November 17th, 1938, did you have a conversation with Tom or Joe Hammond?

A. I did.

Q. Where did that conversation take place?

(Testimony of Evan C. Powell.)

A. In the main warehouse.

Q. Is that in the Boswell Company plant in Corcoran here? A. Yes.

Trial Examiner Lindsay: What date was that?

Mr. Mouritsen: On or about November 17th.

The Witness: November 17th.

Q. (By Mr. Mouritsen) And what time of the day was it? A. In the afternoon.

Q. And who were present at that time?

A. Joe Hammond, Tom Hammond and myself.

Q. Now, will you state the conversation that was had at that [595] time between yourself, Tom and Joe Hammond?

Mr. Clark: Objected to upon the ground it is hearsay as to the respondents in this case, not binding upon any of the respondents, and not constituting, may it please the Examiner, the substantial evidence required to support a finding in a proceeding of this character.

I want to add to the objection that there has been no authority shown in this record from the Boswell Company to either Tom and Joe Hammond, and I will take your Honor's ruling on it.

Trial Examiner Lindsay: He may answer and you may have an exception.

Mr. Mouritsen: Will you read the question, Mr. Reporter?

(The record referred to was read by the reporter, as set forth above.)

(Testimony of Evan C. Powell.)

The Witness: Tommy Hammond called me over to where he and Joe were standing and said, "Coon, can you work on a bale wagon?"

I said, "I thought I could," I hadn't found anything around there yet——

Mr. Clark (Interrupting): I don't quite get the witness' answer, your Honor.

Trial Examiner Lindsay: Will you read the answer, please?

(The record referred to was read by the reporter, as set forth above.) [596]

The Witness (Continuing): ——that I hadn't tackled.

Mr. Mouritsen: Now may I have that question read again, including the last portion, Mr. Reporter.

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen) Is that the statement you made at that time?

A. That was the statement that Tommy Hammond made to me.

Trial Examiner Lindsay: The last part that you stated, did you make that statement to them?

The Witness: Yes.

Q. (By Mr. Mouritsen): Well, was any further conversation had at that time? A. Yes.

(Testimony of Evan C. Powell.)

Q. Will you state what further conversation took place?

A. Joe Hammond spoke up and said, "Well, it seems——

Mr. Clark (Interrupting): This is subject to the same objection? At least I am making the objection?

Trial Examiner Lindsay: Strike the answer and show the objection.

Mr. Clark: Upon the ground of hearsay.

Trial Examiner Lindsay: Have you finished?

Mr. Clark: Yes, your Honor.

Trial Examiner Lindsay: He may answer. [597]
You may have an exception.

The Witness: Joe Hammond spoke up and said, "Work is kind of getting slack in the warehouse." He says, "You be over around 3 and 4 gin in the morning. I might want you to take one of those God damned union employee's jobs."

Q. (By Mr. Mouritsen): At that time did Tom Hammond say anything?

A. He said, "We got to put the quietus on this thing or we will all be out of work."

Mr. Clark: Same objection. I move to strike it upon the same ground.

Trial Examiner Lindsay: Motion denied.

Q. (By Mr. Mouritsen) At that time did you have any understanding of what Tom Hammond meant by "put a quietus to this thing"?

Mr. Clark: Objected to upon the ground it is

(Testimony of Evan C. Powell.)

incompetent, irrelevant and immaterial; calling for a conclusion of this witness.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Mouritsen) Do you recall any further conversation that was had at that time between yourself, Tom, and Joe Hammond?

A. No.

Q. Now, on November 18, 1938, did you have any conversation with Gordon Hammond? [598]

A. Yes.

Q. Where did that conversation take place?

A. In the main office of the Boswell plant.

Q. Approximately what time of the day?

A. Around 8:00 o'clock; about 8:00 o'clock, might be a little before or a little after.

Q. Is that 8:00 o'clock in the morning or 8:00 o'clock at night?

A. In the morning.

Q. Was anyone else present other than yourself and Gordon Hammond? A. No one.

Q. Will you state what Mr. Gordon Hammond said to you and what you said to Mr. Gordon Hammond at that time?

A. He said, "Coon, are you sure Joe Briley, Steve Griffin, and George Andrade are members of the union?"

Q. Did he at that time say whether or not he was going to be away from the plant?

A. Yes.

Q. What did he say regarding his being away from the plant?

(Testimony of Evan C. Powell.)

A. He said, "I am going to be away for a while and the boys are going to have a little get-together over there after awhile, kind of keep things calm if possible." [599]

Mr. Clark: I didn't understand the last.

The Witness: Keep things calm as possible.

Mr. Clark: I still don't get it.

Trial Examiner Lindsay: Keep things calm as possible.

Mr. Clark: Oh.

Q. (By Mr. Mouritsen): Do you recall any further conversation at that time?

A. No, I don't.

Q. What work did you do on the morning of November 18th, 1938, if any?

A. Hauled cotton; bale wagon.

Q. Did anyone direct you to do that type of work on that morning?

A. Well, there didn't seem to be getting started. I had previous orders, the day before, to resume that type of employment the next morning.

Q. Well, now, when you say that, do you refer to the conversation you had had the preceding evening with Mr. Tom and Joe Hammond?

A. Yes.

Mr. Clark: I object to—may I ask that the answer go out, your Honor, until I can get my objection in?

Trial Examiner Lindsay: Yes.

Mr. Clark: I object on the ground it calls for

(Testimony of Evan C. Powell.)

hearsay and for conversations with persons whose authority to speak for [600] the Respondent Company, that is, Boswell Company, has not been shown by this record.

Trial Examiner Lindsay: Objection overruled. He may answer.

Mr. Clark: I suggest that the question be re-read.

Trial Examiner Lindsay: Read the question.

(The record referred to was read by the reporter, as set forth above.)

The Witness: Yes.

Q. (By Mr. Mouritsen) And how long did you continue to work on the bale wagon?

A. We had hauled two loads to the cotton yard; just a short while.

Q. Did you see or attend any meetings held in the Company's plant on the morning of November 18th, 1938? A. Yes.

Q. Do you recall the approximate time that such—you saw or attended such a meeting?

A. About 10:00 o'clock.

Q. Did you see a crowd—did you see the crowd assemble on the morning of November 18th, 1938?

A. Yes.

Q. And approximately how many people did you see in the yard on November 18th, 1938?

A. Well, there was some 60 or 75. [601]

Q. In that crowd, did you see any men who, prior to that time, had given you any instructions or orders regarding your work? A. Yes.

(Testimony of Evan C. Powell.)

Q. Will you state the names of any men you saw in that crowd who, prior to that time, had given you instructions, or orders, regarding your work?

A. Tommy Hammond, Joe Hammond, Bill Robinson.

Mr. Clark: Who was the last one?

The Witness: Bill Robinson.

Q. (By Mr. Mouritsen) Now, were you present during the entire course of that meeting until it disbanded? A. Yes.

Trial Examiner Lindsay: It is 4:30 now. We will adjourn until 9:00 in the morning.

Mr. Clark: Very well, your Honor.

Trial Examiner Lindsay: And we will continue tomorrow until about 2:15 so that we can get out of here in time for others to use this hall.

Mr. Clark: At what time will we take up in the afternoon? I wonder whether I could know that?

Trial Examiner Lindsay: How much time you will have for lunch?

Mr. Clark: Yes.

Trial Examiner Lindsay: We will quit at any time you feel [602] that you want to quit.

Mr. Clark: About 12:00, and pick up at 1:00 again?

Trial Examiner Lindsay: That will be satisfactory.

Mr. Mouritsen: That will be satisfactory.

Mr. Clark: Something like that.

Trial Examiner Lindsay: We will be in recess.

(Whereupon, at 4:30 o'clock P. M., May 23, 1939, the hearing was adjourned to 9:00 o'clock A. M., Wednesday, May 24, 1939.) [603]

American Legion Hall,
Corcoran, California,
Wednesday, May 24, 1939. [604]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: Mr. Examiner, before we proceed with the witness who was on the stand at the conclusion of yesterday's session, I would like to call the Examiner's attention to what I believe to be an omission from the transcript of yesterday in the testimony of Mr. R. K. Martin.

I direct your attention particularly to page 536, line 25 of yesterday's transcript, or rather the transcript of yesterday's proceedings, to line 3, page 537.

The statement by Mr. Martin, as it is reported in the transcript, or as it appears in the reporter's transcript, is as follows, and this, I might say, refers to the group in the office of Mr. Gordon Hammond on the morning of November 18th after, as the testimony shows, a number of employees had gone with Mr. Spear and Mr. Martin and Mr. Farr

and other Union members over to the superintendent's office.

Trial Examiner Lindsay: Does the record show that that does refer to that?

Mr. Clark: Yes, indeed. I am calling that to your Honor's attention.

The statement as it is reported is as follows:

"The Witness: We just waited there for a long time—" may I strike that and give the statement just preceding that.

"Trial Examiner Lindsay: Who did you see in there? [606]

"The Witness: We just waited there for a long time, never did nobody show up to fire us, and finally Mr. Robinson put his head out of the door and told us to go back to work, he would be around to straighten it out."

That is the end of the material I am directing your attention to. Now, all of Respondents' counsel noticed at the time, because of its importance to us, and also it appears in Mr. Winslow's notes taken at the time, and our recollection is very distinct on it, that the statement was as follows, and not as reported:

"We just waited there for a long time, never did nobody show up with authority," instead of the words "to fire us," and I would like to have the reporter look back at his notes, Mr. Lindsay, and see if that wasn't what was said. I am quite sure it was. Your Honor sees that it is quite important to us.

Trial Examiner Lindsay: I remember the testimony very distinctly and the words "with authority" were used, and then after that comes the statement that Mr. Robinson stuck his head out of the door.

Mr. Clark: After that, then, the whole statement would read as follows, according to our recollection:

"We just waited there for a long time, never did nobody show up with authority, and finally Mr. Robinson put his head out of the door and told us to go back to work, he would be [607] around to straighten it out." That is our recollection of the testimony.

Trial Examiner Lindsay: That is the correct testimony. There is no doubt about it.

Mr. Clark: May it be stipulated, then—may I have the notes read back, as I am sure they will show that.

Mr. Mouritsen: I am satisfied that the witness did not use the words "to fire us," and in all probability "with authority" was used in that case. I will so stipulate.

Mr. Clark: I think that settles it.

EVAN C. POWELL,

the witness on the stand at the time of adjournment, resumed the stand and was further examined and testified as follows:

Direct Examination

(Continued)

Q. (By Mr. Mouritsen): Now, Mr. Powell,

(Testimony of Evan C. Powell.)

when you were last on the stand at yesterday's session, I believe that you testified regarding a meeting of a number of people in the yard of the plant of the J. G. Boswell Company on November 18th, 1938. As I recall, you had already described the appearance of that crowd of people, and I believe you testified also that you were present at that occasion during the entire course of the meeting until it disbanded.

Is that correct? A. Yes. [608]

Q. After—strike that.

What occurred—what did you observe and hear at the time that that crowd in the yard of the company disbanded?

Mr. Clark: Objected to upon the ground it is hearsay and not binding upon any of the respondents, and that such testimony does not constitute substantial evidence required under the Act to support a finding.

Trial Examiner Lindsay: He may answer.

The Witness: Well, the crowd gathered there, and Mr. Jack Ely—

Mr. Mouritsen (Interrupting): No. I mean there has been testimony regarding that and I don't think it is necessary for this witness to go into it.

Q. What happened when the meeting disbanded?

A. Oh. Well, they were in the act—

Mr. Clark (Interrupting): Same objection.

Trial Examiner Lindsay: Same ruling.

The Witness: They were in the act of replacing men that had left, that is, union boys.

(Testimony of Evan C. Powell.)

Mr. Clark: Let me have that answer please.

Trial Examiner Lindsay: Yes. Read the answer.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I ask that that go out as not responsive. At least, it is indefinite. I don't know the date. [609]

Trial Examiner Lindsay: He may clear that up. I think it is responsive.

Q. (By Mr. Mouritsen) Did you go over to Gordon Hammond's office after the meeting dispersed in the yard? A. No, I didn't.

Q. What did you do—strike that.

Did you see a number of other people go into the office of Mr. Gordon Hammond?

A. I only saw them go in that direction. I couldn't see the office from where I was.

Q. And did you see a number of men leading Mr. Spear in that direction? A. Yes, sir.

Q. What did you do after those men led Mr. Spear in the direction of Gordon Hammond's office?

A. I stayed just where I was, where the gathering had been.

Mr. Clark: I wonder if your Honor would ask the witness to speak up a little bit.

Trial Examiner Lindsay: Yes. Talk up a little louder.

(Testimony of Evan C. Powell.)

Mr. Mouritsen: And speak more slowly.

Q. You remained in the yard, is that correct?

A. That is right.

Q. After that time did you see any of these people who had gone in the direction of Mr. Gordon Hammond's office return [610] to the yard?

A. Yes, sir.

Q. Approximately how long after you saw them leave?

A. Well, just a short while, ten minutes I would say.

Q. And what did you observe when these people came back from the direction of Mr. Gordon Hammond's office?

A. Well, they endeavored to go back to work and——

Q. (Interrupting) Just state what you observed them do, not what you concluded they were going to do.

Mr. Clark: May I ask that statement go out as not responsive, "they endeavored to go back to work," as being a conclusion of this witness. I take it we are interested in only the objective acts, your Honor.

Trial Examiner Lindsay: The answer may go out. I am not so sure that it is not the proper answer, but it may go out.

Q. (By Mr. Mouritsen) Will you just state what you observed about these people who came back from the direction of Gordon Hammond's office, what they did?

(Testimony of Evan C. Powell.)

Trial Examiner Lindsay: That means, what did you see them do.

Mr. Clark: For the record, I would like to interpose an objection on the ground it is incompetent, irrelevant and immaterial, and not binding on any of the respondents in this proceeding. [611]

Trial Examiner Lindsay: The objection is overruled. You may answer.

The Witness: May I answer?

Trial Examiner Lindsay: Yes.

The Witness: They were trying to get back to their respective positions and——

Q. (By Mr. Mouritsen, interrupting) Well, did you see them do that? Come from the office and go to the places where they ordinarily worked?

Mr. Clark: I ask that the statement, "they are trying to get back to their respective positions," be stricken, your Honor, as being a conclusion of this witness and as being misleading. In other words, one might try against the tide, or he might walk to the place where he was accustomed to work.

Trial Examiner Lindsay: Well, the answer may go out.

Just tell us what you saw them do. [612]

The Witness: Well, the only thing definite, I saw them leave again—they gathered back again in the crowd and they said the employees weren't going to work for the Union men, and they left again.

Trial Examiner Lindsay: You mean left the yard where the meeting was?

(Testimony of Evan C. Powell.)

The Witness: Yes.

Trial Examiner Lindsay: Where did they go, if you noticed?

The Witness: Well, I didn't see them go. I still stayed there. I didn't see where they went. I know where they went, but I didn't see them.

Mr. Clark: Mr. Examiner, I move to strike the statement as to what was said, on the ground it is hearsay.

Trial Examiner Lindsay: The statement may remain.

Q. (By Mr. Mouritsen) What did you do at that time, Mr. Powell?

A. Bill Robinson came around and said——

Mr. Clark (Interrupting): Just a minute.

Q. (By Mr. Mouritsen) Where were you when Bill Robinson came around?

A. Where the gathering had been.

Q. Was anyone else present at that time other than you and Bill Robinson?

A. Not within hearing.

Q. Will you state what Mr. Bill Robinson said to you on that [613] occasion, and what you said to Bill Robinson?

Mr. Clark: Objected to as hearsay and not binding on any of these Respondents.

Trial Examiner Lindsay: He may answer.

The Witness: He said, "You go over and take No. 4 press."

(Testimony of Evan C. Powell.)

I went over where No. 4 was located, and I found that was Joe Briley's job, a Union boy.

Mr. Clark: Now, I ask, may it please your Honor, "I found it was Joe Briley's job, a Union boy—" that is not responsive to the question.

The question was, "What did you do?"

Trial Examiner Lindsay: He is telling what he did. The answer may remain.

The Witness: I found that was Joe Briley's job, a Union boy, and I said, "I can't take that job."

Q. (By Mr. Mouritsen) To whom did you say that?

A. I told Tommy Hammond that I couldn't take that job, that that was a Union boy's job and I would be scabbing on the Union.

Mr. Clark: What was the last?

Trial Examiner Lindsay: He said he would be scabbing on the Union.

The Witness: He said to go over and take No. 1.

Mr. Clark: Your Honor, I am going to object to any statement—rather, I am going to object to this conversation [614] as not being responsive to the question, and being hearsay. I can't get my objection in in view of the manner in which the witness is testifying, Mr. Examiner.

Trial Examiner Lindsay: There is no reason why you cannot get your objection in at any time, because I have told you two or three times that I would strike any answer, and allow you to put in your objection at any time, and rule on it, so that statement is unnecessary.

(Testimony of Evan C. Powell.)

Mr. Clark: Very well. I ask that that answer go out so I will have a chance to object, and ask that the question be re-read.

Trial Examiner Lindsay: It may be so done.
Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

Mr. Clark: I have no objection to the question "To whom did you say that," but this witness has been answering questions like that by giving the conversation, and that doesn't give me a chance to get my hearsay objection in without having a chance to strike the answer.

Trial Examiner Lindsay: Do you have an objection at this time or not?

Mr. Clark: I do not to that question, no, sir. The question is "To whom did you say that?"

Trial Examiner Lindsay: Of what question are you talking [615] about that you did have an objection to?

Mr. Clark: In his answer, Mr. Examiner, he doesn't answer the question "To whom did you say that?" but he says, "I said to so and so this and that," and then he starts to give the statement that the other person says, you see?

Trial Examiner Lindsay: Wait a minute. I understand that. I want to know—you said you didn't have a chance to object. I struck everything. Now, you say you don't have any objection. I want the record straight.

(Testimony of Evan C. Powell.)

Is there a question that you do have an objection to?

Mr. Clark: Now, not at this time.

Trial Examiner Lindsay: What question do you want re-read and the answer stricken?

Mr. Clark: I want the question read.

Trial Examiner Lindsay: You have a motion to strike the answer, is that right?

Mr. Clark: I haven't now, because the answer is stricken, Mr. Examiner. As I understand it, the only place we are in the record—

Trial Examiner Lindsay (Interrupting): Wait a minute. The only place—there is nothing stricken unless you have a motion to strike.

Mr. Clark: I move to strike that.

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.) [616]

Trial Examiner Lindsay: On the record.

Mr. Clark: Now, I move, Mr. Examiner, that the answer to the last question be stricken from the record on the ground it is not responsive.

Trial Examiner Lindsay: May I have the last question and the last answer read?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: I am only granting the motion to that last statement. The other answer may remain.

(Testimony of Evan C. Powell.)

Mr. Clark: I understand the motion is granted as to the last part of the answer?

Trial Examiner Lindsay: Yes. I have already stated that on the record, Mr. Clark.

Mr. Clark: May this go off the record?

Trial Examiner Lindsay: Yes. Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record. [617]

Mr. Mouritsen: Very well.

Q. Now, where were you when you made that statement to Tommy Hammond?

A. At No. 4 gin building.

Q. And at the time when you made that statement to Mr. Tommy Hammond, was anyone else present?

A. Not within hearing.

Q. Now, after that time was any other job offered to you? A. There was.

Q. And by whom was it offered?

A. Tommy Hammond.

Q. And did he make a statement to you or say anything to you at the time when he offered you another job? A. He just said—

Q. (Interrupting) No, just say yes or no.

A. Yes.

Q. Now, was anyone else present when he said something to you about taking another job?

A. Not within hearing.

Q. And where were you when he made such statement to you about taking another job?

(Testimony of Evan C. Powell.)

A. No. 4 gin building.

Q. Now, what did Mr. Tommy Hammond say to you about taking another job at that time?

Mr. Clark: Objected to as hearsay; incompetent, irrelevant and immaterial, and not binding on any of these respond- [618] ents.

Trial Examiner Lindsay: He may answer.

The Witness: To go over to No. 1 and take that press.

Q. (By Mr. Mouritsen) Did you make any reply? A. No.

Q. Did you go over to No. 1 press?

A. I did.

Q. Did you have any conversation with anyone while you were at No. 1 press? A. Yes.

Q. With whom did you have any conversation?

A. Derichsweiler, a fellow known as "Good Friday." I can't pronounce his name.

Q. Is he an employee of the plant and was he an employee at that time? A. Yes.

Q. Was anyone else present when you talked to "Good Friday" Derichsweiler?

A. His son.

Q. Do you know his son's name?

A. I do not.

Q. Is it also Derichsweiler, his last name?

A. Right.

Q. Was anyone else present other than those two and yourself? [619]

A. Not within hearing.

(Testimony of Evan C. Powell.)

Q. What conversation took place at that time between yourself and the Derichsweilers?

Mr. Clark: Objected to as incompetent, irrelevant and immaterial, hearsay, and not binding on any of these respondents.

Trial Examiner Lindsay: He may answer.

The Witness: I asked him if that press was the one that Pete Wingo had been operating. He said it was.

Q. (By Mr. Mouritsen) Did you have any further conversation at that time? A. No.

Q. What did you then do?

A. I reported to Mr. Tommy Hammond that that was Pete Wingo's job.

Q. Where was Tommy Hammond when you talked to him after that time?

A. He was at the engine room on that gin building.

Q. And was anyone else present other than yourself and Mr. Tommy Hammond?

A. Not within hearing.

Q. What did Mr. —what did you say to Mr. Tom Hammond and what did he say to you at that time?

Mr. Clark: Objected to as incompetent, irrelevant and immaterial; hearsay, and not binding on any of these respondents, [620] no authority having been established in this record from the respondent Boswell to Mr. Tom Hammond to speak for it with regard to any of these matters.

(Testimony of Evan C. Powell.)

Trial Examiner Lindsay: He may answer.

The Witness: I told him that that was Pete Wingo's job, I couldn't take that job.

Q. (By Mr. Mouritsen) Did Mr. Tom Hammond say anything at that time? A. No.

Q. What did you next do after your conversation with Mr. Tom Hammond?

A. Bill Robinson came around.

Q. And where did you—where were you when Bill Robinson came around?

A. Just at the end of the platform where the cotton is rolled, the cotton is rolled out of the building on the ground.

Q. Was anyone else present at that time other than yourself and Bill Robinson? A. No.

Q. Did you have a conversation with Mr. Robinson at that time? A. I did.

Q. What did you say to Mr. Bill Robinson and what did he say to you? [621]

Mr. Clark: Objected to as hearsay, not binding on any of the respondents, no authority having been shown by the respondent Boswell Company to Mr. Bill Robinson to speak for it with regard to any of the matters under investigation; also incompetent, irrelevant and immaterial, your Honor.

Trial Examiner Lindsay: He may answer.

The Witness: He said I'd better throw that God damn button down before the men found out I had it on and scatter up the ground with me.

Mr. Clark: May I have that answer read?

(Testimony of Evan C. Powell.)

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen) And what button did you have on at that time?

A. The union button. [622]

Q. Did you see any of the other Union members wearing Union buttons that morning?

A. Yes.

Q. Will you name the other Union members that you saw wearing buttons that morning?

A. Oliver Farr, R. K. Martin, George Andrade, Pete Wingo and Joe Briley.

Q. Was that the first day that you had worn your button at the plant? A. It was.

Q. Prior to that time, had you seen any of these other members of the Union wearing Union buttons at the plant? A. No.

Q. I believe that you stated after you had your conversation with Bill Robinson that you left the plant, is that correct? A. That is right.

Q. Where did you go after you left the plant?

A. O. L. Farr's residence.

Q. Did you see a number of other Union members present at O. L. Farr's house?

A. I did.

Q. While you were present at O. L. Farr's house, did he make a telephone call to Louie Robinson? A. Not that I know of.

Q. Approximately how long did you remain at O. L. Farr's [623] house after you went there?

(Testimony of Evan C. Powell.)

A. It could have been several hours; I don't recall just how long I did stay.

Q. After November 18th, 1938, did you ever have a conversation with Clyde Sitton regarding your return to work at the J. G. Boswell Company's plant?

A. I had a conversation with Clyde Sitton; not regarding going to work.

Mr. Clark: You say not regarding going to work?

The Witness: (Nodding head affirmatively.)

Q. (By Mr. Mouritsen) And who is Clyde Sitton?

A. He was a machinist in the machine shop at the Boswell plant.

Q. Did he ever make a visit to your home after November 18th, 1938?

Mr. Clark: Objected to as incompetent, irrelevant and immaterial.

Mr. Mouritsen: It is preliminary, your Honor.

Trial Examiner Lindsay: May we have who Clyde Sitton is?

Mr. Clark: That was established.

Mr. Mouritsen: That was established. The witness just testified that he is an employee at the Company, as I understand his testimony.

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.) [624]

Trial Examiner Lindsay: On the record.

Q. (By Mr. Mouritsen) Was Clyde Sitton an employee of the J. G. Boswell Company at its Cor-

(Testimony of Evan C. Powell.)

coran plant on or about the time you had any conversation with him after November 18th, 1938?

A. He was.

Trial Examiner Lindsay: Now he may answer. You may have an exception.

Mr. Mouritsen: I will re-frame the question, Mr. Examiner. I believe it has been lost.

Q. After November 18th, 1938, did you have any conversation with Clyde Sitton? A. I did.

Mr. Clark: I object to that as incompetent, irrelevant and immaterial, not binding on any of these Respondents.

Trial Examiner Lindsay: He may answer.

Q. (By Mr. Mouritsen) And where did you have this conversation? A. In front of my home.

Q. And approximately—what was the approximate date of this conversation?

A. A few days, just a few days after November 18th.

Q. Was anyone else present other than yourself and Sitton? A. Yes.

Q. Who else was present? [625]

A. Jack Owens.

Q. Who is Jack Owens?

A. He is an employee at the Boswell plant.

Q. Was he an employee at that time?

A. Yes.

Q. What did Mr. Sitton say to you, and what did you say to Mr. Sitton on that occasion?

Mr. Clark: Objected to as calling for hearsay

(Testimony of Evan C. Powell.)

and not being binding upon any of the Respondents to this proceeding; no authority having been shown from the Respondent Boswell Company to Mr. Sitton or Mr. Owens to speak for it with regard to any of the matters under investigation in this proceeding.

Trial Examiner Lindsay: He may answer, and you may have an exception.

The Witness: There was no conversation between the three, just Clyde Sitton.

Q. (By Mr. Mouritsen) Will you state what Mr. Sitton said to you and what you said to Mr. Sitton?

Mr. Clark: Same objection, your Honor.

Trial Examiner Lindsay: He may answer.

The Witness: He said Mr. Hammond would like to see me down at the office.

Trial Examiner Lindsay: What Hammond?

The Witness: Mr. Gordon Hammond. [626]

Q. (By Mr. Mouritsen) Was there any further conversation at that time?

Mr. Clark: Same objection.

Trial Examiner Lindsay: Same ruling.

The Witness: None that I recall.

Q. (By Mr. Mouritsen) After that time, did you see Mr. Gordon Hammond? A. I did.

Q. How long—strike that.

What was the approximate date when you saw Mr. Gordon Hammond after that time?

A. About the 25th, as I recall it; around the 25th, on or about the 25th of November.

Q. And the year? Of what year?

(Testimony of Evan C. Powell.)

A. Correction. I don't mean—I mean the 15th.

Mr. Clark: What month?

Mr. Mouritsen: Strike that.

Q. Now, what was the approximate date of the conversation that you had with Mr. Gordon Hammond after November 18th, 1938, and after Clyde Sitton told you that Hammond wanted to see you?

A. I place it around the 20th.

Q. Of what month and of what year?

A. November, 1938.

Q. And where did you see Mr. Hammond on that occasion? [627]

A. It was in the main office building.

Q. Was anyone else there other than yourself and Gordon Hammond?

A. Not within hearing.

Q. Will you state what you said to Mr. Hammond and what Mr. Gordon Hammond said to you?

A. Mr. Hammond said, "Coon," he says, "I haven't got anything against you."

Mr. Clark: May I have that read back, Mr. Examiner? I can't follow it.

(The record referred to was read by the reporter, as set forth above.)

The Witness (Continuing): "—you can go back to work if you want to."

I said, "Well, I would be afraid to go back to work after the fellows did what they did the other day."

He said, I need not worry about that, that he

(Testimony of Evan C. Powell.)

would go out there and tell those fellows to lay off and they would do so.

Q. (By Mr. Mouritsen) Did you say anything further at that time?

A. I told him that I better—I joined the Union and I better string along with them, find out what the outcome would be.

Mr. Clark: May I have that answer re-read? [628]

Mr. Mouritsen: “I joined the Union, I better string along with them, find out what the outcome would be.”

Mr. Clark: Is that the answer?

The Witness: That is the answer.

Q. (By Mr. Mouritsen) Did Mr. Hammond say anything further after you told him you were going to string along with the Union?

A. He said, “After I find out that it was all ‘hoey’—that a bunch of fellows claiming something they couldn’t back up, after I found out it was all ‘hoey’, I would come back and if there was anything there, he would give it to me.”

Q. Now, after November—no, strike that.

After that conversation with Gordon Hammond, did he ever notify you to come back to work?

A. No.

Q. Did you ever make application after that time to go back to work? A. No.

Q. Have you earned—strike that.

Have you been employed since November 18th, 1938? A. No.

(Testimony of Evan C. Powell.)

Q. Have you earned any money at all since November 18th, 1938? A. No.

Q. If the National Labor Relations Board should order the Respondent to re-instate you with back pay, would you be willing [629] to accept employment with the J. G. Boswell Company?

A. Yes.

Mr. Mouritsen: You may inquire.

Mr. Clark: May I have Board's Exhibit No. 3?

(The document referred to was passed to Mr. Clark.)

Mr. Clark: Will your Honor pardon me just a moment?

Trial Examiner Lindsay: Yes.

Cross Examination

Q. (By Mr. Clark) Now, Mr. Powell, you first went to work for Boswell Company in August of 1936, is that right?

A. Somewhere about that time.

Q. And was that immediately upon your return to the State of California from the State of Georgia?

A. It was. [630]

Q. Your family lives in Georgia, is that right?

A. My parents?

Q. Yes. I mean, they did live there?

A. Yes.

Q. And they were known to—that is, they were acquaintances of Mr. Gordon Hammond, is that not right? A. That is right.

Mr. Mouritsen: Objected to—I move to strike—

(Testimony of Evan C. Powell.)

Mr. Clark (Interrupting): It is preliminary, your Honor.

Trial Examiner Lindsay: He may answer.

Mr. Clark: Yes. May I have the last?

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: Very well.

Q. You, however, had lived in California for some 15 years prior to August of 1936, hadn't you?

A. August 1921, off and on.

Q. In other words, you had lived in California off and on since 1921, is that right?

A. That is right.

Q. And just prior to August of 1926, that is, just prior to your return to California, you had been in Georgia, I think you said?

Mr. Mouritsen: May I have that again? [631]

Mr. Clark: '36, I mean. Let me reframe that.

Q. Just prior to August of 1936 you had been in the state of Georgia, isn't that true?

A. That is right.

Q. Now, what was the occasion for your return to California?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial; and not proving any of the issues in this case.

Mr. Clark: Withdraw that.

Q. What had been your employment in Georgia just prior to coming back to California?

A. I was not employed.

(Testimony of Evan C. Powell.)

Q. How long had you been in Georgia on that occasion?

Mr. Mouritsen: Objected to as immaterial.

Trial Examiner Lindsay: Well, I don't know the purpose of it, but he may answer it.

The Witness: Several years.

Q. (By Mr. Clark) As a matter of fact, just prior to your returning to California you had been indicted for murder in the State of Georgia, hadn't you?

Mr. Mouritsen: Mr. Examiner, I must object. Counsel is continuously out of order. I think if this record is examined you will find the expression that occurs most frequently to date is the fact that Mr. Clark interrupts, interrupting the witness, the Trial Examiner, and counsel for the Board, so [632] that it is impossible to present the facts that have been gathered. I submit that counsel is very often out of order.

Mr. Clark: I am satisfied to submit this to the Circuit Court of Appeals, your Honor, so far as my conduct in this trial is concerned. I think the record is clear in that matter.

Trial Examiner Lindsay: That is out of order. You do not know if you will have a chance to present it to the Circuit Court of Appeals.

Mr. Clark: I assume that.

Trial Examiner Lindsay: You all know the rules of evidence that govern questions put to a witness, and the rule of evidence is that you can only go into

(Testimony of Evan C. Powell.)

questions of that nature when there has been a conviction.

An indictment means nothing. The most innocent person in the world might be indicted for several vicious crimes and without any pretense of even looking into the question as to whether or not a crime has been committed or whether or not he was the probable person who committed the crime——

Mr. Clark (Interrupting): I will take your Honor's ruling on it.

Mr. Mouritsen: I object to the question on the ground it is incompetent, irrelevant and immaterial; and it is not a proper question to test the veracity or to impeach the testimony of this witness in any way, not in this hearing or in [633] any other court in the country.

Mr. Clark: May I suggest this, Mr. Examiner, that although the ruling apparently is going to be that the answer is stricken, Mr. Reporter has just indicated he didn't get the answer and I want it to clearly appear in this record as to what happened, namely, that this witness answered yes to this question.

Trial Examiner Lindsay: I said I struck the answer.

Mr. Clark: I understand that.

Trial Examiner Lindsay: If he answered yes, that is in the record, but the answer is stricken and the objection is sustained.

Mr. Clark: I understand that.

(Testimony of Evan C. Powell.)

Trial Examiner Lindsay: Now, let us not go into matters that are not fair. It is very evident this man is not convicted of murder or he wouldn't be here.

Mr. Clark: He was convicted of another felony.

Trial Examiner Lindsay: That is off the record, too.

Mr. Mouritsen: I submit, Mr. Examiner, that counsel is not presenting the case in any way. It appears to counsel for the Board that he is trying to bait the Trial Examiner into some admission of prejudicial error. Counsel is trying to ball up the record so that it will be impossible to present it to a Circuit Court for decision.

Mr. Clark: I resent that. I have never had that state- [634] ment made in all the years I have been trying cases. I have tried a number of cases in the district courts and up along this coast. I will instruct the Court to allow me to proceed with the cross examination of this witness. I don't propose to be accused of this and that continuously by this gentleman who represents the National Labor Relations Board in this case, or is trying to.

Trial Examiner Lindsay: Well, listen. We are going to get down and try this case and get these facts.

Mr. Clark: That is all I want to do.

Trial Examiner Lindsay: Wait a minute. When I make a statement, I expect that any answer that is made to it will be made courteously and that you

(Testimony of Evan C. Powell.)

will follow the rules of practice of procedure. That goes to everyone in this hearing.

Now, if there are going to be other outbursts and a lot of unnecessary things, it will be necessary to get counsel in here that will follow the rules and regulations of practice.

Mr. Clark: You mean counsel for the respondent, not for the Board?

Trial Examiner Lindsay: I mean all counsel. I didn't say respondent, Mr. Clark. That is a typical example of what you are attempting to do. You are trying to insert things into statements I made that I have no intention of being there. [635] I frankly admit that I have put up with considerable in this hearing, and there is a limit to such patience. All I want in this hearing is courtesy that is due any court. I have gone out of my way to see that your objections have been properly placed in the record and your motions. I have ruled on all of them and stated at the beginning of this hearing that where anyone who made an objection receiving an adverse ruling asked for an exception, the exception automatically appears in the record. And I have received sarcastic remarks.

Let us go on and get the facts in this case. That is what we are here for.

If it is necessary, I have the right to take a witness and examine the witness in order to get the facts.

Now, all I expect is just the ordinary courtesy you

(Testimony of Evan C. Powell.)

would give to any court. I expect the attorneys to conduct themselves as gentlemen and proceed with the examination of these witnesses. That is all I am asking. Now, let us proceed and do that. [636]

Mr. Clark: May I proceed, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark) Please state, Mr. Powell, whether or not you have ever been convicted of a felony in the State of California? A. No.

Correction?

Trial Examiner Lindsay: Yes.

The Witness: This check charge I referred to yesterday was a felony. However, on pleading guilty and on recommendation of the District Attorney to the Probation Officer of Kings County for leniency, there was no doubt that I would get straight probation and, therefore, I plead guilty and got the works, and got four months, and three years' probation.

Q. (By Mr. Clark) As a matter of fact, you were convicted of a felony in February of 1938, weren't you, by the Superior Court of Kings County?

A. I was convicted of a check charge.

Q. Do you know whether or not that was a felony?

A. Yes, it was a felony, and I plead guilty to the charge.

Q. All right.

Now, as a matter of fact, you are on probation now, aren't you? A. That is right.

(Testimony of Evan C. Powell.)

Q. And that is the offense for which you testified on your [637] direct examination you received four years in the County Jail of this County?

A. Four months.

Q. Four months, I mean, in the County Jail of this County? A. That is right.

Q. The sentence in that case being four months in the County Jail and three years' probation?

A. That is right.

Q. Do I understand you to say that during the two years you worked in Georgia immediately preceding your return to California in August of 1936, that you were not employed at all?

A. No, I was not employed.

Q. What was your means of subsistence?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: Submit it.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark) How long did you work for Boswell Company after you obtained the job you testified to on direct examination in August of 1936, without interruption?

A. May I have that question again?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.) [638]

Mr. Clark: The question is rather clumsy, and I will reframe it, if I may.

(Testimony of Evan C. Powell.)

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark): Am I correct in stating that you worked for Boswell and Company without interruption from August of 1936 to approximately the 1st of November, 1937?

A. I worked from August—if I recall I had one or two days off for deep sea fishing. After returning back, I worked almost steadily until August the following year, '37.

Q. Until August of '37.

Now, during that year you have just testified to, namely from August, '36 to August, '37, do I understand that you did odd jobs as the work opened up at the Boswell plant?

A. When I first started to work, I did odd jobs until ginning season started.

Q. In other words, you did odd jobs until September of '36, is that true?

A. About that time.

Q. And then you worked practically steadily, with a day off here and there, until August of 1937, is that correct?

A. I didn't have, if I recall, more than one day off.

Q. You didn't work at ginning cotton during all that time, did you? A. No, I didn't.

Q. In other words, the 1936-'37 ginning season ended along [639] in January or February of '37, didn't it? A. Somewhere about that time.

Q. Yes.

(Testimony of Evan C. Powell.)

And then what were you put doing?

A. I was engineering at that time.

Mr. Clark: "I was engineering at that time," I think the answer is?

Trial Examiner Lindsay: Is that the answer?

The Witness: Yes.

Q. (By Mr. Clark): Tell us what you mean by that with relation to this particular Company?

A. What do I mean by—

Q. (Interrupting): By the term "engineering."

A. Oh, yes, that is oiling, swabbing up grease, wiping machinery and keeping things up spick and span.

Q. And the machinery you referred to are the machines or engines which run the gins, is that correct? A. Not at that time.

Q. What engines are you referring to?

A. In the generator room where the power is generated.

Q. How long did you continue in that job, straight through from February to August of '37?

A. Somewhere around the latter part of August, as I recall it, and after I returned from vacation.

Q. How much of a vacation did you have? [640]

A. About two weeks or less.

Q. And when was that? A. In August, '37.

Q. I see.

Did you take your vacation before you finally were laid off in August of '37? A. Yes.

Q. And for how long after your vacation was

(Testimony of Evan C. Powell.)

over did you work at the plant in any capacity, before you were laid off?

A. I was laid off immediately after I returned from vacation.

Q. I see.

Now, when were you next employed at Boswell's after August of 1937? A. At what position?

Q. No. When; in any capacity?

A. Just a few days, maybe one day.

Q. Well, I understand this lay-off you are telling us about was only for a day or so?

A. That is right. [641]

Q. Then what job were you employed in at the plant?

A. I worked around digging a ditch for a few days until ginning season started, digging ditches.

Q. Didn't the ginning season start that year, this being the 1937-'38 season, along in middle September?

A. I think so, somewhere along in there.

Q. Do I understand that you worked from some time in August to the middle of September at digging ditches?

A. I couldn't say just how long, some time—I do not know how long I was digging ditches.

Q. Please give us your best approximation of it.

Trial Examiner Lindsay: I believe he answered that he did odd jobs like that.

Mr. Clark: He said a day or so.

Trial Examiner Lindsay: He concluded by stating until the gin opened up.

(Testimony of Evan C. Powell.)

Mr. Clark: Very well.

Q. You didn't do any other work other than digging ditches until the gin opened up, isn't that true?

A. I did other work than digging ditches.

Q. Well, what? A. General work.

Q. Tell us what it is, briefly.

A. I don't recall what I did.

Q. Sort of handy work around the plant? [642]

A. Yes.

Q. And then in September of '37 what position or what job were you put at?

A. Tying up cotton.

Q. And how long did you do that?

A. Just a few weeks.

Q. And then what happened?

A. I had an injury.

Q. All right.

That brings us up, doesn't it, Mr. Powell, to November 1 of 1937, approximately?

A. To my best knowledge.

Q. Yes.

And what was this injury that you sustained?

A. A finger.

Q. What happened to it?

A. A press door caught my finger on top of a fire barrel and an oil drum being used as a fire barrel.

Q. I see.

And you, of course, received workman's compensation payments for that, didn't you?

(Testimony of Evan C. Powell.)

A. Oh, yes.

Q. As a result of that injury you were away from the plant about two months, weren't you?

A. That is right. [643]

Q. That is, November and December?

A. Yes.

Q. And then Mr. Gordon Hammond got in touch with you and asked you whether you were in shape to work, is that not right?

A. Well, I think the doctor released me and gave me permission to go back to work.

Q. At the time the doctor released you, your compensation payments stopped for that period of time, didn't they? A. I believe so.

Q. Yes.

During the two months you have referred to, you received these payments periodically, didn't you?

A. All but about eight days—it started the eighth day after the accident.

Q. And then the doctor representing the insurance company released you and your payments stopped, isn't that true?

A. As I recall, yes.

Q. Yes.

Now, at that time didn't Mr. Gordon—withdraw that.

You have a wife and two children here, haven't you? A. Yes, sir.

Q. Your wife is from Georgia? A. Yes.

Q. Didn't Mr. Hammond get in touch with you

(Testimony of Evan C. Powell.)

then and ask you [644] whether you were in shape to do any work at the plant?

A. I did work. I don't recall.

Q. I am asking you the occasion for your going back.

A. I don't recall just how it came about that I returned to work.

Q. Would you say that Mr. Gordon Hammond did not of his own volition get in touch with you and ask you if you were in shape to do any kind of work at the plant?

A. I should think he did, or would.

Q. Yes.

In other words, you didn't go and make application to him, did you?

A. I don't recall how it came about.

Q. And at that time did you say to Mr. Gordon Hammond that you couldn't do any of the kind of work that you had in the past?

A. I did.

Q. Because of this injury?

A. I think so.

Q. And did he then tell you—

A. (Interrupting): Correction.

Q. All right.

A. The type of work that I had got injured on, not the kind that I had done in the past.

Q. I see. [645]

Then did Mr. Gordon Hammond tell you that due to some cotton being piled in the yard they were using a day and night watchman and he would put you on in one of those jobs?

(Testimony of Evan C. Powell.)

A. Some time in that fall, yes.

Q. Now, I am directing your attention, Mr. Witness, to the time after your compensation payments stopped, which is almost the first of the year, 1938, according to your own testimony.

A. Yes, he offered that proposition.

Q. Yes.

Trial Examiner Lindsay: Just a moment. Is that '38?

Mr. Clark: '38. I think the testimony shows the injury was in '37.

Trial Examiner Lindsay: All right.

Mr. Clark: May I have the last question and answer?

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark): And he offered it at about the first of the year 1938, didn't he?

A. About that time.

Q. In fact—withdraw that.

I will show you your employment sheet for the year 1938, in Board's Exhibit No. 3, which is listed under your name, Evan C. Powell, and direct your attention to the first entry which is 1/6, meaning January 6, 1938, and I will ask you if, [646] examining that refreshes your recollection as to the time when Mr. Hammond had the conversation you have just told us about with you.

A. Well, I say that was offered. I don't recall just what time it was. [647]

(Testimony of Evan C. Powell.)

Q. Here is my question: After looking at the record I have just shown you, can't you tell us, or isn't it a fact, that the conversation with Mr. Gordon Hammond we have just been discussing occurred the day prior to January 6th of 1938?

A. It might indicate it by this. I don't know.

Q. I want your recollection, if it is refreshed at all by this?

A. Somewhere about that time.

Q. All right.

Pursuant to that conversation, you then went back to work at the Boswell plant around the first of the year '38?

A. No. I don't recall going back to work until July 3rd.

Q. Well, don't you recall receiving a check for a period ending January 6th, 1938?

A. I don't remember that at all. I could have.

Q. Now, it is your testimony, Mr. Powell, that you did not return to work at the Boswell plant at all after you were injured?

A. After this proposition was made, after the offer of night duty, watchman's duty.

Q. Now, let us see.

You were injured around the 1st of November, 1937, weren't you?

A. Injured, as well as I remember, the 27th of September, '37. [648]

Q. November, 1937, isn't that true?

A. I don't think so; September.

(Testimony of Evan C. Powell.)

Q. Well, now, you think about it, and let us have your best answer?

A. The record will show that.

Q. Let us have your best answer on the approximate date of your injury, and bear in mind that I am not concerned with the exact date. I only want the month?

A. I was injured in the first part of the ginning season that year.

Q. What is your best recollection so far as the time you were injured, at this time?

A. It is customary, I think, the gin season starts in September some time—I don't—in the Fall of that year.

Q. Well, is it your best recollection—

Trial Examiner Lindsay (Interrupting): Now, just a moment.

Mr. Clark: Yes.

Trial Examiner Lindsay: You are getting this witness all confused, and you do have records, don't you, from the doctor and from the insurance company, that shows the exact day?

Mr. Clark: I thought, Mr. Examiner, it was all agreed between the witness and myself and counsel for the board and the records, and everything else, that he was injured around the first of November, 1937, and now he is apparently unable [649] to remember whether it was November or September.

Trail Examiner Lindsay: I think his testimony was it was in September; he was injured right after the season started.

(Testimony of Evan C. Powell.)

Now, if his memory isn't good on the matter, and you are trying to change that, I suggest you change it by documentary proof.

Mr. Clark: I think I am entitled to test the recollection of this witness, too.

Trial Examiner Lindsay: Yes, I understand that. I want it right in the record.

Mr. Clark: That is all right, too.

Q. Mr. Powell, will you give us—withdraw that.

Will you tell us again how long it was you worked at the Boswell plant after you were re-employed in August of 1937?

A. After I was employed August '37?

Q. Yes, that being the time when you told us you dug ditches for a few days, and then did odd jobs until the ginning season started?

A. I returned on my engine job for a few days. I could explain that so you would understand it better, if you permit me.

Q. No, the question is this : I want you simply to tell us how long you worked in any capacity at the Boswell plant after you were re-employed in August of 1937, that is, immediate- [650] ly after your two weeks' vacation?

A. I returned to my job for a few days. It had been arranged—I had asked for an extension of vacation to go up North, and it had been granted by Mr. Hammond, Mr. Gordon Hammond, the superintendent, and they had arranged for another boy to work in my place while I was gone—through Mr.

(Testimony of Evan C. Powell.)

Gordon Hammond. For some mysterious reason, Tommy Hammond wanted another party on that job, so he laid me off.

I then returned to Mr. Gordon Hammond stating to him that Tommy Hammond had laid me off, and what to do about it.

“You come back in the morning. We will find something for you to do.”

So I did dig ditches and odd jobs until the ginning season started. Then I took the head press job on one of the gins.

Q. Now, how long——

A. (Interrupting): I worked there just a few weeks, as I recall it, until I had the injury.

Q. All right.

Now, will you please fix the date of the injury for us as best you can? What is your best recollection of it?

A. Well, now since I recall it, it is September 27th, on or about September 27th.

Q. All right.

Then, do I understand that you did not work again in any capacity at the Boswell plant here in Corcoran for the balance [651] of that year, namely 1937?

A. Approximately two months.

Mr. Clark: May I have the question re-read to the witness, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(Testimony of Evan C. Powell.)

The Witness: I do understand the question.

Trial Examiner Lindsay: You understand the question? The Witness: Yes, sir.

Q. (By Mr. Clark): Did you return to work in any capacity at the plant any time during the balance of that year, 1937, after you were injured on September 27th? A. I think so.

Q. All right.

And when was that, please?

A. I was off about two months with the injury.

Q. Well, that would bring us up to the last of November, according to this calculation, Mr. Powell.

Is it your testimony that you worked from the last of November on through to the end of the year at the plant?

A. I was off from the injury about two months, and returned back to work.

Q. You are positive of that, are you?

A. I think so.

Q. All right.

Now, what job were you put at when you returned back to [652] work after your injury?

A. Oh, clean up; school boy jobs.

Q. And for how long did you continue on those jobs?

A. Oh, for some time. I never did any steady work or any particular work after that.

Q. Well, how long would you say?

A. Until July 3rd.

Q. Of 1938?

(Testimony of Evan C. Powell.)

A. Yes, that I did any labor to amount to anything.

Q. I don't think that you understand my question.

A. Yes, I thoroughly understand it.

Mr. Clark: May I have the question read back to the witness, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Mr. Clark: To see whether he has it in mind?

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark): All right.

Now, do I understand from that that you didn't do any work at all at the Boswell Company from around the 1st of the year 1938 until July 3rd, 1938?

A. I didn't say I didn't do any work. I did—I was on the payroll, and I did odd jobs, various things.

Q. How do you know you were on the payroll?

A. I drew checks for it. [653]

Q. Mr. Powell, let me direct your attention again to your Social Security record for the year 1938, and particularly to the fact that there is no entry between the entry of January 6th, 1938 and July 7th, 1938?

A. I am telling you that was my—

Q. (Interrupting): Showing that no sum of money was paid to you by this Company.

Now, after, upon examining that, is your recol-

(Testimony of Evan C. Powell.)

lection refreshed so you can tell us whether or not you did any work at all for the Boswell Company during the period from January 6th, 1938 to July 7th?

A. No, I don't say I did any work during that period. I say after the injury I resumed work about two months for a period, and then along about the last of the year, I didn't resume work then until July 3rd.

Q. All right.

Trial Examiner Lindsay: That was his first answer that he gave on the record.

Q. (By Mr. Clark): Your testimony, then, is that upon the expiration of two months after your injury, you went back to work at the Boswell plant, is that right? A. I think so.

Q. All right.

And I think you told us you did odd jobs at that time? A. Yes. [654]

Q. Is that right? A. Clean-up work.

Q. All right.

How long, as near as you can remember now, did you continue working for Boswell on that occasion?

Mr. Mouritsen: I object to the question on the ground it has already been asked and answered twice.

Trial Examiner Lindsay: Yes. We have gone into that fully.

Q. (By Mr. Clark): Am I correct in stating, then, that you worked for two months at jobs like that? A. No.

(Testimony of Evan C. Powell.)

Q. Well, how long, please, because that is the only testimony in there on it?

A. As I recall, I did odd jobs for some period in there, not steady, just—I didn't do steady work after my injury.

Q. At no time after your injury?

A. Until July 3rd.

Q. All right.

What is your best estimate of the time during which you did these odd jobs which you said commenced upon the expiration of two months after your injury? A. I don't know exactly.

Q. Was it a matter of a month?

A. The records will show it. I don't recall it exactly. [655]

Q. Can you give us any estimate of it?

A. No.

Mr. Mouritsen: I object to it on the grounds it is already asked and answered.

Trial Examiner Lindsay: Proceed to something else. That has been fully covered.

Mr. Clark: All right.

Q. How did it happen that you ceased your employment—that is, the doing of these odd jobs, during that period of time? A. Why I ceased?

Q. Yes.

A. Well, after my injury, I got to hitting up the booze a little bit, and went haywire, gambling; gambling and booze story, got in a little trouble, and got in jail.

(Testimony of Evan C. Powell.)

Q. Well, do I understand that you were employed at the Boswell Company at the time you were convicted of the felony you have told us about?

A. No, I was not employed.

Q. In other words, you were down in Los Angeles prior to that? A. San Bernardino.

Q. You were where? A. San Bernardino.

Q. Hadn't you gone to Los Angeles just prior to the time you were convicted? [656]

A. Yes. I went to Los Angeles, and then down to San Bernardino.

Q. All right.

Then if I understand you correctly, Mr. Powell, sometime near the end of the year 1937 you got to drinking and gambling, and thereupon stopped working at these odd jobs for Boswell Company, is that true? A. I did.

Q. Yes. A. I wasn't working.

Q. All right.

Then was it after that, namely just prior to January 6th of 1938, that Mr. Gordon Hammond got in touch with you and said that if you would come around, he would put you to work at being a watchman?

Mr. Mouritsen: Objected to as assuming facts not in evidence, and contrary to the evidence already put in by the witness.

Mr. Clark: Submit it.

Trial Examiner Lindsay: Just a minute.

Have you finished?

(Testimony of Evan C. Powell.)

Mr. Mouritsen: I made my objection.

Trial Examiner Lindsay: He may answer that.

The Witness: Read the question.

(The question referred to was read by the reporter, as [657] set forth above.)

The Witness: That was when I left and went to Los Angeles and San Bernardino.

Mr. Clark: All right.

Q. And wasn't it just prior to January 6th of '38. A. About that time. [658]

Q. Yes.

Now, as a matter of fact, you did go to work for a few days at the job Mr. Hammond offered you, didn't you, and in that connection I want to direct your attention to the entry, Board's Exhibit No. 3, showing that as of the date of January 6th a check for \$12.60 was paid to you.

Mr. Mouritsen: I object to the question upon the ground it is confusing, compound.

Mr. Clark: I ask that it be read, and then will take your Honor's ruling on it.

Trial Examiner Lindsay: Read the question.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: I think you ought to divide those two questions.

Mr. Clark: Very well.

Q. I first want to direct your attention to the entry, the first entry on Board's Exhibit No. 3 on

(Testimony of Evan C. Powell.)

your sheet entitled "Evan C. Powell," the entry being January 6, 1938, \$12.60. I will ask you to look at that, Mr. Powell.

A. (Examining document)

Q. Do you see that entry?

A. Yes, I see that.

Q. Now, I want to ask you if it isn't a fact that you did go to work at the Boswell plant at the job Mr. Hammond had [659] offered you just prior to January 6th? A. I did not.

Q. And that you worked there for a few days?

A. I did not go to work at the job Mr. Hammond offered me as watchman.

Q. Did you receive the check for \$12.60, the record of which I have directed your attention to in Board's Exhibit No. 3?

A. I don't recall receiving a check. I might have and I might not.

Q. You are quite sure you did not work, however, at that time? A. I am.

Trial Examiner Lindsay: He said at the job, as I understand it—

The Witness (Interrupting): At this job he offered me.

Q. (By Mr. Clark): Did you ever do any other work at Boswell's at that particular time?

A. I don't recall that I did; a very nervous stage at that time. I don't remember just exactly what took place.

Q. I see.

(Testimony of Evan C. Powell.)

Now, it was just about this time, wasn't it, Mr. Powell, that in addition to the fictitious check upon which you were convicted and sentenced by the Superior Court of Kings County, as you have already testified, that you uttered another false [660] check for \$60 drawn on a bank in Georgia, and requested Mr. Gordon Hammond to endorse it for you?

Mr. Mouritsen: I object to that on the ground he is asking the witness legal questions, calling for legal conclusions.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: He may answer.

The Witness: May I have that question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: The check Mr. Gordon Hammond endorsed——

Mr. Clark (Interrupting): Please answer the question and then explain.

The Witness: I can't answer that question——

Trial Examiner Lindsay (Interrupting): Explain. He may answer and explain it.

Mr. Clark: That is what I am suggesting.

Trial Examiner Lindsay: We want the truth.

The Witness: The check that Mr. Gordon Hammond endorsed for \$60 was a check before I made another check for \$15, a gambling check that I was convicted for. I was not convicted for the \$60 check

(Testimony of Evan C. Powell.)

that Gordon Hammond endorsed. I was convicted of a \$15 check issued in a gambling debt.

Q. (By Mr. Clark): I understand that.

A. He had no endorsement on that check. [661]

Trial Examiner Lindsay: May I ask a couple of questions right here?

Mr. Clark: Yes.

Trial Examiner Lindsay: This \$15 check you say that you were convicted on was a gambling check? What do you mean by that?

The Witness: Well, I mean I was in a poker game and received chips that I lost on a poker game and paid off.

Trial Examiner Lindsay: With a \$15 check?

The Witness: \$15 check.

Trial Examiner Lindsay: Then you paid a gambling debt with that \$15 check, is that right?

The Witness: That is right.

Trial Examiner Lindsay: And you were convicted on that gambling check?

The Witness: Yes.

Trial Examiner Lindsay: Did the prosecuting attorney know that that was a gambling check?

The Witness: He did.

Trial Examiner Lindsay: You may proceed.

Q. (By Mr. Clark): Now, as a matter of fact, Mr. Powell, what you really did with that \$15 check was to go outside and have a person who was not in the game cash a check for you and then you brought cash back into the game and lost it, isn't that right? [662]

(Testimony of Evan C. Powell.)

A. That is not right.

Trial Examiner Lindsay: What is that?

The Witness: That is not right.

Q. (By Mr. Clark): You are sure of that?

A. I am positive.

Q. Was the man who cashed the check and who made the complaint against you to the District Attorney for the issuance of this fictitious check, that is, the \$15 check, sitting in the poker game?

The Witness: May I have that question?

(The record referred to was read by the reporter, as set forth above.)

The Witness: No, he was not.

Q. (By Mr. Clark): So that I am correct in stating, am I not, that the thing you did was to go out and have someone who was not gambling with you cash the check and then you paid the proceeds of it over to the persons to whom you lost it?

A. I did not go out and I had no one to cash the check.

Q. Well, tell us what you did, please.

A. I was—this check—Mr. Gordon Hammond—

Q. (Interrupting): I am not talking about that.

A. I will have to do that to explain.

Trial Examiner Lindsay: Explain the whole details.

Mr. Clark: Very well. [663]

The Witness: The check I had issued for \$60 that Mr. Gordon Hammond had cashed, I was play-

(Testimony of Evan C. Powell.)

ing that in a poker game and lost it, and when the game wound up I owed \$15 more that I had lost, or they claimed I had lost in the game, gambling. I had been drinking. They claimed that I owed \$15 more. I had previously issued to the amount of several hundred dollars, to this same party, checks on the local bank here, stating and with the understanding that if there were no funds in the bank, that he would hold them, from time to time, as I would lose chips, and on payday I would go in and take the checks up without any trouble at all.

On giving this check, I told him that this check might come back, if it did I would make it good as I did hundreds of dollars of other checks good. That was perfectly all right.

Trial Examiner Lindsay: That was the same man to whom you had given these other checks?

The Witness: That is right.

Trial Examiner Lindsay: And when you gave him these other checks, you went back in and picked them up on payday, is that right?

The Witness: Yes.

Trial Examiner Lindsay: Now, did he ever question any of your checks that you gave him at the time you told him they were not good but that you would pick them up on payday? [664]

The Witness: Never.

Trial Examiner Lindsay: And is this the same man who got this \$15 check?

(Testimony of Evan C. Powell.)

The Witness: That is right.

Q. (By Mr. Clark) As I understand, he wasn't taking part in the game, is that right?

A. He was the owner of the game. He was not playing in the game. He was running the house, the houseman.

Q. Well, what is his name?

A. Bill Carden.

Q. And *who* is his occupation?

A. He is a saloonist, a saloon keeper.

Q. And where, please?

A. At the establishment known as Bill and Max Carden's establishment—it was at that time—he lost out, now.

Trial Examiner Lindsay: Now, may I have one more question? I want the truth on this matter.

This Bill Carden, the man you gave this \$15 check to, was the operator of this saloon and also of the gambling table?

The Witness: Well, he had a man running the game. It was his establishment. He kept a man running the game.

Trial Examiner Lindsay: But that was done right there in his building?

The Witness: Yes. [665]

Trial Examiner Lindsay: He is the man you had been giving these checks to?

The Witness: Yes, sir.

Trial Examiner Lindsay: And you always went back on payday and picked these checks up?

(Testimony of Evan C. Powell.)

The Witness: That is right.

Trial Examiner Lindsay: When you gave him this \$15 check, you told him that the check was likely to come back?

The Witness: Yes.

Trial Examiner Lindsay: And he took the check with that understanding?

The Witness: Yes.

Mr. Clark: I will object to that, what the understanding was when the man took the check.

Trial Examiner Lindsay: He told him—that is his testimony.

Mr. Clark: I will object to the Examiner's question and take a ruling on it.

Trial Examiner Lindsay: All right.

Now, as I understand it, you said you told the men whom you gave the \$15 check to, at the time you gave it to him, that the check might come back?

The Witness: Yes.

Trial Examiner Lindsay: As you had done in the past?

The Witness: Yes. [666]

Trial Examiner Lindsay: Now, the next payday did you go in and say anything to him about that \$15 check?

The Witness: I wasn't *work* at that time.

Trial Examiner Lindsay: You weren't working at that time?

The Witness: No.

Trial Examiner Lindsay: Did he know you were not working at that time?

(Testimony of Evan C. Powell.)

The Witness: He knew I wasn't working at that time.

Trial Examiner Lindsay: You told him that you were not working?

The Witness: Yes.

Trial Examiner Lindsay: Now, were all of these facts presented at any time to your knowledge to the prosecuting attorney?

The Witness: They were.

Trial Examiner Lindsay: And that is the check upon which you were convicted?

The Witness: That is right, on the strength of the \$60 check they had found out that Mr. Hammond had taken up, the \$60 check. They knew it was a gambling check, and they went down and got the \$60 check that Mr. Gordon Hammond endorsed to convict on this \$15 check.

Trial Examiner Lindsay: May I ask you this question: Did Gordon Hammond sign any complaint against you? [667]

The Witness: He did not. I repaid him that check out of my salary.

Mr. Clark: May I have that again?

The Witness: I repaid him that check out of my salary.

Mr. Clark: All of it?

The Witness: Yes.

Mr. Clark: May I proceed, please, with my examination?

Trial Examiner Lindsay: Yes.

(Testimony of Evan C. Powell.)

Q. (By Mr. Clark) Can you tell us to whom you paid the proceeds of the \$15 check which Carden cashed? A. To whom I paid the proceeds?

Q. Yes.

A. That check has not been paid.

Trial Examiner Lindsay: He doesn't quite understand.

Who did you give the money to?

Mr. Clark: Let me reframe the question and withdraw the other.

Q. Mr. Carden cashed a \$15 check for you, didn't he?

A. He did not cash a \$15 check. He gave me chips for the check.

Q. He gave you chips for the check?

A. Uh huh.

Q. Didn't give you money, is that right?

A. No.

Q. To whom did you lose the chips? [668]

A. Oh, Dick, Tom, and Harry.

Q. I see. Not to Mr. Carden? A. No.

Q. Now, it was prior to that, wasn't it, Mr. Powell, that you had dropped by Gordon Hammond's home and asked him to endorse a check drawn by you on a bank down in Georgia?

A. It was prior, you said?

Q. Yes. It was before this \$15 check incident, wasn't it? A. That is right.

Q. That was a check for \$60, wasn't it?

A. Yes, sir.

(Testimony of Evan C. Powell.)

Q. And you didn't have any money in the Georgia bank, did you?

A. I did not, evidently.

Q. No.

And Mr. Gordon Hammond endorsed your check for \$60, didn't he, on that occasion?

A. Yes, he did.

Q. Now, he wasn't a party to this gambling game, was he? A. No, sir.

Mr. Clark: May I have a recess at this time?

Trial Examiner Lindsay: Yes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: The hearing is called to order. [669]

Mr. Clark: May I proceed?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark) Mr. Powell, you stated a few moments ago on your cross examination that apparently there wasn't any money in the Georgia bank to meet the \$60 check.

Trial Examiner Lindsay: I think we have covered that.

Mr. Clark: I would like to develop it a little if I may.

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark, continuing) —which Mr. Gordon Hammond had endorsed for you. Do you remember that statement?

(Testimony of Evan C. Powell.)

A. I didn't make the statement as you stated it.

Q. Did you use the word "apparently"?

A. I think so.

Q. Did you have any reason to believe there were funds against which you could draw in the Georgia bank? A. No.

Q. You don't have an account there in the Georgia bank?

A. No, I did time for not having an account there.

Q. What?

A. I did time for not having an account there.

Mr. Clark: I want to show you this, Mr. Mouritsen.

(The document referred to was passed to Mr. Mouritsen.)

Mr. Clark: Will your Honor pardon us a few minutes while counsel examines the exhibit? [670]

Trial Examiner Lindsay: Yes.

(Short interruption while counsel examines exhibit.) [671]

Q. (By Mr. Clark) Now, Mr. Powell, I show you what purports to be the original file from the County Clerk's office of the County of Kings, State of California, in the matter of The People of the State of California versus E. C. Powell, Criminal, 1465.

Mr. Mouritsen: Is that the number of the County—

(Testimony of Evan C. Powell.)

Mr. Clark (Interrupting): That is the number of the proceeding, eriminal.

Q. (Continuing): —and particularly to the original transcript of the hearing held on February 24th, 1938 in that matter, and I will ask you to simply read to yourself the portion of the transcript commencing with line 15 on the 5th page, to and including line 10 on the 6th page.

Mr. Clark: May I have it read back to me? I think it made sense the way the question is, although I broke off in the middle.

Trial Examiner Lindsay: He can understand it. It is right there. If he doesn't, he can ask you or me and we will explain it to him.

Mr. Clark: I am only interested down through line 10 for the time being.

Q. I want to ask you, Mr. Witness, first: It is a fact, isn't it, that you were present throughout this entire hearing?

A. This preliminary hearing just referred to? [672]

Q. Yes. A. That is right.

Q. Will you please tell us whether or not at the preliminary examination in the case of The People of the State of California versus E. C. Powell, No. 1465, Criminal, in the City Court of the City of Corcoran, County of Kings, State of California, the following answers were asked by Mr. Walsh, the District Attorney of Kings County—

Trial Examiner Lindsay (Interrupting): You don't mean answers.

(Testimony of Evan C. Powell.)

Q. (By Mr. Clark) (Continuing): —the following questions were asked by Mr. Walch, the District Attorney of Kings County, of Mr. Carden, and whether he gave the answers to the questions as follows:

“Q. Was this check made out and delivered to you by the defendant, E. C. Powell?

“A. Made it out right on the bar and where I cashed it.

“Q. At your place of business?

“A. At my place of business.

“Q. And what did you give him for it?

“A. \$15.00.

“Q. In cash?

“A. Three five-dollar bills.

“Q. I see. You don't know, I presume, what he used this money for? [673]

“A. I think I do.

“Q. What? A. Playing poker.

“Q. He went back and played poker. In your place of business? A. Uh huh.

“Q. At the time he cashed it he hadn't lost that in a game, had he? A. How's that?

“Q. At the time he cashed this check he hadn't lost this money in a game there, had he?

“A. I couldn't tell you. He came up and asked me to cash another check. I had cashed one for sixty. A few days before that he brought it in there, made out on the same bank,

(Testimony of Evan C. Powell.)

with Mr. Hammond's signature on it, and he asked me if I would cash it with his signature and I told him I would, we looked at it and recognized the signature so I cashed it." [674]

Q. Were those questions asked by the District Attorney Walsh of Mr. Carden on the occasion referred to, and did he give those answers in your presence?

A. If those answers were given—if those questions were asked, I don't recall it, but if they were asked and answered, they weren't correct.

Q. Can you tell us whether or not, as nearly as you can recollect, the questions which I have read to you were in fact put to Mr. Carden by District Attorney Walsh, and whether Mr. Carden in your presence gave those answers?

Mr. Mouritsen: I object to the question unless the witness knows or recalls.

Mr. Clark: That is all I am calling for.

The Witness: I recall nothing that was said or done during that hearing.

Q. (By Mr. Clark): Now, I also want to direct your attention, Mr. Powell—

Trial Examiner Lindsay (Interrupting): Isn't that Carden here in the city now?

Mr. Clark: I do not know if he is or not. I am going to offer the transcript of the proceeding in evidence. It was obviously in the presence of this witness, but I can't offer the original file. I have to

(Testimony of Evan C. Powell.)

furnish a certified copy.

Q. I also direct your attention, Mr. Powell, in the same transcript in the same trial, to what purports to be your testi- [675] mony on February 24th, 1938, in which connection I will ask you to take a few minutes and read it to yourself, commencing on the 11th page of the transcript.

A. I can save the Court time and trouble going over this for reasons I would like to explain.

Trial Examiner Lindsay: You may explain any reasons you have; I mean, anything in connection with that hearing.

The Witness: Any procedure in this hearing—I don't recall anything about it due to the fact that when the officer got me from San Bernardino I had been on a several weeks' drunk, and they rode me in a car all night and all night long, and got me out of bed. I was ill with pneumonia. They rode me up all night, and I almost froze to death. And they put me to bed on a concrete slab; and I was seriously close to pneumonia, and under those conditions, I don't remember a thing in the world of that procedure at all.

Mr. Clark: May I ask, Mr. Examiner, if the witness wants to do so, to read what purports to be the testimony in the original transcript?

The Witness: I do not know anything that happened in that procedure. It wouldn't do any good.

Q. (By Mr. Clark): I will ask you whether or not on this occasion, namely, at the preliminary hearing of the matter referred to, on February 24th,

(Testimony of Evan C. Powell.)

1938, the District Attorney Walsh asked you the following questions, and whether you gave [676] the following answers:

“E. C. POWELL

“called, sworn and examined as a witness, testified as follows:”—

By the way, before I go on with this, do you remember being sworn at this hearing?

A. I guess I was sworn.

“Mr. Walsh: Your name is E. C. Powell?

“A. Yes, sir.

“Q. Where do you live, Mr. Powell?

“A. I lived here about a year and a half.

“Q. I see. Are you married?

“A. Yes, sir.

“Q. Where is your family?

“A. Down in San Bernardino.

“Q. Of what does your family consist?

“A. Wife and two children.

“Q. How old are the children?

“A. Five and three.

“Q. I see. When did you go to San Bernardino from Corcoran?

“A. I went to San Bernardino from Los Angeles.

“Q. Well, when did you leave Corcoran?

“A. About six or eight weeks ago, or possibly two months. About six or eight weeks ago, I'd say, something in that [677] neighborhood.

“Q. Now, you know what the charge is?

(Testimony of Evan C. Powell.)

“A. Yes, sir.

“Q. You received a copy of the complaint?

“A. Yes, sir.

“Q. You know of Mr. Carden—you have heard his testimony, that on the 17th of January of this year you did cash a \$15.00 check on the Farmers and Merchants Bank of Summerville, Georgia?

“A. Yes, sir.

“Q. And that he gave you three five-dollar bills for that check? Now, is there anything about that transaction or concerning this check that you want to tell us?

“A. I just would like to make a statement.

“Q. All right, go ahead, make a statement in your own words.

“A. I gave the checks with no intention of beating them, but intended to make them good as I have made others, and I had no intention of beating them. When I could find employment to make them good I intended to do it, and I hadn't been hid out or anything. I was under my same name and have given references here of employment of various nature.

“Q. Now, let me ask you: When you gave this check you knew that you didn't have the money in that bank, didn't you? [678]

“A. I figured on making the checks good.

“Q. That isn't what I mean. At the time you gave the check, you knew you didn't have the money in that bank but you intended—

(Testimony of Evan C. Powell.)

“A. To meet it.

“Q. —to go out and get some money and take it up. Is that right?

“A. I intended to meet it there from money that was owed me and promised me.

“Q. Where was this money owed to you?

“A. Back in the East, in Georgia.

“Q. I see. But it wasn't in the bank at that time—
A. No, sir.

“Q. Did you actually have an account back there or wasn't there just—or, didn't you have an account at all?

“A. No, I didn't have any account at the time.

“Q. The same thing is true of that sixty dollar check that Mr. Hammond put his name on?

“A. His name, you say?

“Q. I say, is that true of the sixty dollar check, too, that was cashed by Mr. Carden on account of Mr. Hammond's—

“A. Yes, sir, Mr. Hammond endorsed it.

“Q. —indorsing it. Have you got any other checks at this time outstanding, do you know?
A. No, sir, none. [679]

“Q. None? A. None.

“Q. Have you ever had a checking account at the local bank here in Concoran?

“A. No, sir.

“Mr. Walch: That's all. Anything else you want to say?
A. No.

(Testimony of Evan C. Powell.)

“The Court: No other statements you would like to give on your behalf? A. No, sir.

“Q. And you have no witnesses at this time to testify, have you? A. No, sir.

“The Court: Anything further, Mr. Walch?

“Mr. Walch: That’s all. I ask that he be held to answer. I’m not going to introduce the check at this time, your Honor.

“The Court: It is the order of the court that the defendant be held to answer to the Superior Court.” [680]

Now, may I ask you whether or not on the occasion just referred to, the questions which I have just read to you were put to you by District Attorney Walch, and whether you made the answers which I likewise have just read to you?

A. I don’t recall any questions. I don’t recall any answers.

Trial Examiner Lindsay: May I ask one or two questions right here to keep it in order?

Mr. Clark: Yes.

Trial Examiner Lindsay: Did the prosecuting attorney or the Justice of the Peace—is that what you call him?

Mr. Clark: The District Attorney.

Trial Examiner Lindsay: Well, I understand that.

Mr. Clark: It is the Municipal Court—what is it here?

(Testimony of Evan C. Powell.)

Mr. Wingrove: City Police Judge.

Mr. Clark: City Police Judge in this County.

Trial Examiner Lindsay: Did the prosecuting attorney or the City Police Judge, if you remember, that morning tell you that you were entitled to have an attorney if you so desired, in that proceeding?

The Witness: Well, he might possibly have. I don't recall.

Trial Examiner Lindsay: Did anybody explain your rights to you at that time, at that hearing?

The Witness: I am aware that those things are provided [681] in those cases, but I don't recall whether it was mentioned that morning or not.

Trial Examiner Lindsay: You didn't have any attorney there representing you?

The Witness: No.

Trial Examiner Lindsay: Well, was that hearing held the same morning that they brought you over?

The Witness: No. I arrived here at 3:00 or 4:00 o'clock in the morning, something like that.

Trial Examiner Lindsay: You got here at 3:00 or 4:00 o'clock in the morning, and when was the hearing held?

The Witness: The same day.

Trial Examiner Lindsay: The same morning?

The Witness: The same day.

Trial Examiner Lindsay: The same day.

May I see that transcript?

Mr. Clark: May I, in connection with this, first, Mr. Examiner, read into the record, after showing

(Testimony of Evan C. Powell.)

it to the witness if he so desires, pertinent parts in response to your Honor's last questions, and then I will hand the transcript to you?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark) I will ask you, Mr. Witness, whether or not on the occasion just referred to the following statements were made to you by the Honorable W. I. Nonhof, Judge of the City Court of Hanford— [682]

Mr. Wingrove (Interrupting): Of Corcoran.

Trial Examiner Lindsay: Which is it?

Mr. Clark: Just a minute.

(Conference between counsel.)

Mr. Clark: Yes, Judge of the City Court of Corcoran, reading as follows:

“The Court: You are ready to proceed, are you?”

“The Defendant: Yes, sir.

“The Court: I will read this complaint to you.”

Then follows the complaint on file, which I don't think it is necessary to read into the record, but which I will, if your Honor thinks it is necessary. I will submit it to you. It is the accusation—

Trial Examiner Lindsay (Interrupting): I don't care anything about that. I know what it is.

Mr. Clark: It is concerning the check.

Then, after the complaint is read, I will ask you whether these statements were made to you by the Judge:

(Testimony of Evan C. Powell.)

“I will inform you of your legal rights. You are entitled to a speedy and public trial; to be represented by counsel at all stages of the proceedings, to produce witnesses on your behalf, and to be confronted with the witnesses against you in the presence of the Court. You are entitled to bail and to a preliminary examination. You cannot plead in this court unless you are accompanied by your attorney. If, however, you [683] are accompanied by your attorney, you may, with the consent of the District Attorney and the magistrate, plead guilty to the charge at this time.

“Unless you plead guilty to the charge in this court, it will be necessary for you to have your preliminary examination in this court, and if the Court finds that a public offense has been committed and there is sufficient cause to believe you guilty thereof, you will be held to answer in the Superior Court. [This Court cannot appoint an attorney to represent you. In the Superior Court, if you desire the services of an attorney, and are unable to employ one, the Court will appoint an attorney to represent you.

“The defendant stated that he was ready to proceed with the case, so we proceeded with it.

“Mr. Walsh: All right. You are ready to go right ahead with the preliminary examination, are you, Mr. Powell? Is that the name?

“Defendant Powell: Yes.

(Testimony of Evan C. Powell.)

“Mr. Walsh: You understand from what the Court has told you what a preliminary examination is?”

“The Defendant: Yes.”

“Mr. Walsh: It is a procedure that has to be followed. You are ready to proceed with that now, is that right?”

“The Defendant: Yes, sir.”

“Mr. Walsh: Call Mr. B. H. Carden.” [684]

Now, were those statements made to you by the Judge at the hearing just referred to?

A. Could have been. I don't recall them.

Q. And were the questions asked of you by District Attorney Walsh, which I have just read to you, asked at the hearing just referred to?

A. Could have been. I don't recall.

Mr. Clark: Yes.

There is one further question I would like to ask in this connection, and it is this:

Q. I am correct in stating, am I not, Mr. Powell, that the game that you were playing, that is, the gambling game you referred to, was draw poker at \$1.00 limit? A. It was not.

Q. What was it?

Mr. Mouritsen: Objected to as immaterial. . .

Mr. Clark: It is absolutely material. I will explain it in just a minute, your Honor.

The Court: Go ahead.

Q. (By Mr. Clark) What was it?

(Testimony of Evan C. Powell.)

A. Well, they had two types of poker in the past in that particular establishment.

Q. I want to know what this game was that you were playing?

A. I will bring you up to that if you will let me.

Q. May I have the answer? [685]

A. What is your question?

Mr. Clark: May I have the question read?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

The Witness: That was a \$5.00 take-out in this particular game. At that time they was running a similar game known as joker poker that you did, that you could, as I recall it, take out a one dollar take, but this particular game, as I recall, was a \$5.00 California draw, known as California Draw, straights and flushes before the draw.

Q. (By Mr. Clark) All right.

It was called California draw, isn't that it, the name of the game?

A. I think that was the name of the game.

Q. Am I not correct in stating that the limit of any given bet, no matter when made in betting a particular hand, was \$1.00?

A. No, it was the sky.

Q. Unlimited, you say?

A. All the chips you had in front of you, you could call, all those chips.

Q. Very well.

(Testimony of Evan C. Powell.)

You are positive of that, too, are you?

A. Oh, yes. [686]

(Pause.)

Mr. Mouritsen: Is there a question pending?

Mr. Clark: I was waiting for the Examiner.

Trial Examiner Lindsay: I haven't anything.

Mr. Clark: I thought you wanted to examine that?

Trial Examiner Lindsay: I can listen to you and examine it too.

Mr. Clark: Very well. All right.

Q. Had you ever been convicted of a felony in this State, particularly in the County of Los Angeles, prior to this occasion in February of '38?

A. This check?

Q. Not a check. Any felony?

Mr. Mouritsen: I think the witness indicates from his answer that he doesn't understand.

Mr. Clark: I will reframe it.

Q. Will you please state, Mr. Powell, whether or not you have ever been convicted of a felony in the State of California, and I refer particularly to the City and County of Los Angeles, prior to the check episode?

A. Then, as I understand, if I were convicted in Los Angeles?

Q. Or anywhere else in this State?

A. Not in Los Angeles or anywhere else in this State.

Q. Never have, on any prior occasion, been convicted of a felony, is that correct? [687]

(Testimony of Evan C. Powell.)

A. In this State.

Q. In this State? A. No.

Q. All right.

Now, how about any other State?

A. I never have any record, anything on record where I was convicted.

Q. Well, were you convicted? Please state whether you were convicted or not?

A. Well, I was tried for murder one time—

Q. (Interrupting) I don't care about that.

Mr. Mouritsen: I move that the answer go out as not responsive to the question, your Honor.

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark) Have you ever been convicted of a felony? A. Yes.

Q. In any State except this check?

A. Yes.

Q. All right. When was that?

A. Seven or eight or ten years ago.

Q. And where? A. Georgia.

Q. Did you serve time in the Penitentiary there for it? A. I did not.

Q. Were you given probation? [688]

A. Did not; unconditional pardon.

Q. And how soon after your conviction was it that you were pardoned?

A. Just a week or so.

Q. I see.

Now, were you ever convicted of a felony in any State of the Union on any other occasion than those you have testified to? A. Never.

(Testimony of Evan C. Powell.)

Q. You are positive of that? A. Positive.

Q. And you have never been convicted of a felony in the Superior Court for the County of Los Angeles? A. Never.

Q. In the State of California? A. Never.

Q. All right.

Now, you will notice that in the preliminary examination in connection with the check charge, which I directed your attention to, you are asked the question as to whether or not you had any children, and I think you answered two children?

A. In this preliminary?

Q. Yes. Do you remember that?

A. Could have been. I don't recall it.

Q. As a matter of fact, you have more children than that, [689] haven't you?

A. I have one other by a former marriage.

Q. And is he living, or is that child living in this State? A. He is.

Q. And is your former wife living in this State?

A. She is.

Q. Did you obtain a divorce? A. No.

Trial Examiner Lindsay: Let us not go into personal——

Mr. Clark (Interrupting): I think this also bears on the man's credibility, your Honor. After all, it is his word against Gordon Hammond's.

Trial Examiner Lindsay: I am not questioning that, at all. I do not want to go into the other family affair.

(Testimony of Evan C. Powell.)

Q. (By Mr. Clark) Now, going back a moment to the start of the year 1938, that is January, 1938, I am correct in stating, am I not, that you had ceased work at Boswell's prior to the time you got into this trouble about the check? That is true, isn't it?

A. I had ceased work?

Q. At Boswell's, before you got in trouble about the check? A. Oh, yes.

Q. Yes.

And you were not working at Boswell's when you came by Mr. Hammond's house and got him to endorse the \$60.00 check? [690]

A. I was not.

Q. All right.

And you told us he did endorse it, is that true?

A. Did what?

Q. You told us that he endorsed it?

Trial Examiner Lindsay: We have gone over that.

Mr. Clark: Yes, that is in the record. All right.

Q. Now, Mr. Gordon Hammond never prosecuted you on that, did he? A. Never.

Q. All right.

Isn't it a fact that during the time you were in the County Jail in the Spring of 1938, Mr. Gordon Hammond advanced money to your wife and two children for their support?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

(Testimony of Evan C. Powell.)

Mr. Clark: Well, it bears upon the obligation. He testified to an obligation on his direct examination. He testified to being obligated financially.

Mr. Mouritsen: I believe I recall that testimony. Withdraw the objection.

Trial Examiner Lindsay: Yes. He may answer.

The Witness: That was my understanding. However, since that time I have been informed—as to whether it was rumor or not, I don't know—that that money was taken up among the [691] employees and sent. I don't believe that to be true. I think Mr. Hammond sent direct \$25.00, if I remember correctly, to my wife in San Bernardino.

Mr. Clark: All right.

Q. Now, have you ever repaid any of that money? A. I have not.

Q. You never had? A. No.

Q. I think you stated you repaid only the \$60.00 check to him? A. I did.

Q. Didn't he on another occasion, after you got out of jail, lend you some money personally?

A. He did not.

Q. Now, after you left Boswell's, that is the plant, on the morning of November 18th of 1938, as I understand it you never went back again, is that true, so far as doing any work is concerned?

A. No.

Q. Did you go back to pick up some checks, some further pay checks?

A. I received possibly two checks after that. [692]

(Testimony of Evan C. Powell.)

Q. Well, I will direct your attention to your sheet in Board's Exhibit No. 3 again and particularly, Mr. Powell, to the entries, November 17, 1938, \$28.70; November 24, 1938, \$21.35; and December 1st, 1938, of \$7.00.

A. I received a check November 10, 1938, for \$28.82.

Q. \$29.40 for November 10th?

A. That is the original check, unemployment and social security taken out of that, gives you a balance of \$28.82.

Q. Now, let us have your next check, and the date. Just read your next check and the date that you have there.

A. Here is November 24th.

Q. Is there one for the 17th?

A. I don't have that check.

Q. Do you remember whether or not you received a check for the week ending November 17th?

A. I received my check that was coming due that week for wages for that week, and then I received another check for one complete week that I didn't work, and a balance of \$7.00—\$6.86.

Q. Now, let me see if we can't paraphrase it so we can get at it.

I am correct in stating, am I not, that for the week ending November 17, 1938, you received \$28.70 minus whatever deductions there were for social security? A. \$28.82. [693]

Q. Now, for the week ending November 17th—

(Testimony of Evan C. Powell.)

A. (Interrupting) I don't have that check.

Q. You received a check for that week?

A. I might have.

Q. Didn't you?

A. Well, I could have. I don't recall that. I might have.

Q. All right.

Then you received a further check at a later date for the week ending November 24, 1938, isn't that right?

A. Yes. Here it is. (Indicating)

Q. All right. You have the stub for that?

A. Yes.

Q. And then you received a further check in the sum of \$7.00 for the week ending December 1, 1938, is that not right? A. Yes.

Q. You are showing me the stub for that, isn't that right? A. Yes.

Mr. Mouritsen: It is understood, Mr. Counsel, is it not, that any apparent discrepancies are due to deductions for unemployment and social security?

Mr. Clark: Surely.

Q. Now, you never applied to Boswell's for any employment after the time you received the December 1st check for \$7.00, [694] isn't that so?

A. Never applied for work; no.

Q. All right.

But at the time subsequently, Mr. Powell, to December 1st, you did have a conversation with Mr. Gordon Hammond, didn't you, regarding further workman's compensation payments?

(Testimony of Evan C. Powell.)

A. What date was that?

Q. After December 1st of 1938? A. Yes.

Q. And will you please fix the time of that as nearly as you can?

A. You fixed it after December 1st, somewhere about that time.

Q. Was it in January of this year?

A. Could have been; might have been.

Q. Didn't you ask Mr. Gordon Hammond on that occasion to recommend you for an operation on your finger by the physicians for the insurance company carrying the Boswell Company workman's compensation insurance?

Mr. Mouritsen: I object to that upon the ground it is utterly immaterial and has no bearing on the issues of the case.

Mr. Clark: It is preliminary, your Honor. I am not going to state my purpose. I have gotten into trouble for [695] doing that.

Trial Examiner Lindsay: No, you haven't gotten into trouble for doing that.

Read the question.

Mr. Clark: I want to show further workmen's compensation payments picking up just at that time. Of course, they are by the insurance carrier for the company and they indicate that it warranted a disability, and these are made on the basis of permanent disability.

Trial Examiner Lindsay: He may answer.

Mr. Clark: Now may I have the question read back?

(Testimony of Evan C. Powell.)

Trial Examiner Lindsay: Read the question.

(The pending question was read by the reporter, as set forth above.)

The Witness: I did.

Mr. Clark: Yes.

Q. Now, can you be a little more specific for us, Mr. Powell, so far as the time of that conversation of Mr. Hammond is concerned?

A. I don't recall exactly the time I made that request.

Q. I see.

Now, pursuant to that conversation, or following it, did you go to San Francisco and have an operation on your finger? A. I did.

Q. And what was done to your finger? [696]

A. The left index finger amputated.

Q. I see.

And as a result of that, did you receive any rating by the Industrial Accident Commission of this State? A. I did.

Q. So far as your ability to perform work is concerned? A. I did.

Q. And what was that?

A. 63 weeks at \$18.15 a week, equivalent to that much.

Q. And weren't you rated, or weren't you paid at the rate of a permanent disability?

A. Yes.

Q. You were given a permanent disability rating, weren't you? A. Yes.

(Testimony of Evan C. Powell.)

Q. And when did you receive—withdraw that. Tell us approximately how much that insurance payment amounted to. You have told us the number of weeks, first.

Trial Examiner Lindsay: That is a matter of calculation. You can easily get that.

Q. (By Mr. Clark) What was it again, so that I can just be sure you are correct on the figures?

Trial Examiner Lindsay: How much a week?

The Witness: \$18.15.

Trial Examiner Lindsay: For how many weeks? [697]

The Witness: 63 weeks.

Trial Examiner Lindsay: 63.

The Witness: Current after 8 days after injury.

Trial Examiner Lindsay: All right.

Q. (By Mr. Clark) You have received that payment, haven't you? A. Yes.

Q. All in a lump sum?

A. I did—well——

Q. (Interrupting) And how long——

Mr. Mouritsen (Interrupting): Let the witness finish. He indicated there was some explanation.

Mr. Clark: Oh, very well.

Mr. Mouritsen: He should have that right.

The Witness: I received the final payment for a certain amount. However, I had drawn compensation that had been paid me prior to this time which was deducted from the amount set by the Industrial Accident Commission.

(Testimony of Evan C. Powell.)

Mr. Clark: I see.

Q. And when did you receive your final payment?

Mr. Mouritsen: Objected to as immaterial.

Mr. Clark: Submit it.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark) And since that time you haven't applied for any further work at the Boswell Company? [698] A. No.

Q. Did you receive any instructions from Mr. Prior on or about November 28 of 1938 with respect to whether you should or should not apply to the Boswell Company for future work? A. No.

Q. Nothing at all was said to you by Mr. Prior in that connection, is that true? A. Nothing.

Q. What? A. None.

Q. All right.

When was it that you first heard that any of the employees at the Boswell Company had joined or were about to join an American Federation of Labor union? A. Early in November, '38.

Q. Of '38?

A. Latter part of September or first part of November, somewhere in there.

Q. I see.

You have told us that you had been out of the plant since September 27th, is that right?

Mr. Mouritsen: I object to the question. What year were you talking about?

Mr. Clark: '38.

(Testimony of Evan C. Powell.)

The Witness: Read me that question. [699]

(The record referred to was read by the reporter, as set forth above.)

The Witness: I hadn't been out of the plant?

Q. (By Mr. Clark) That you had been out of the plant, you hadn't worked since September 27th.

Mr. Mouritsen: I object to that.

Trial Examiner Lindsay: His testimony is, as I understand it, that he went back and did some odd jobs after that. I think you brought that out here on cross examination.

Q. (By Mr. Clark) Well, how long had you been working at the Boswell plant on the occasion when you first heard about the union?

A. Since July 3rd, on or about July 3rd.

Q. Well, do I understand then that you had worked continuously at the Boswell plant from July 3rd, 1938, up until November 1st?

A. Almost. I don't think I missed a day; not more than one day out of that time, I don't believe.

Mr. Clark: Very well.

Trial Examiner Lindsay: Was it November 1 or November 18?

Mr. Clark: November 1st I am talking about.

Q. I am correct in stating, am I not, that it was about November 1st when you first heard anything about the union?

A. No. I heard about it; first applications I heard were [700] then made.

(Testimony of Evan C. Powell.)

Q. Well, the thing I want to know, Mr. Powell, is when you first heard anything about any of the Boswell employees joining an American Federation of Labor union.

A. That was about that time.

Q. That is about November 1st, was it?

A. Yes.

Q. Do I understand that you worked continuously except for a day or so at the plant from July 3rd on up until November 1st?

A. Almost. I might have been off a day or something like that.

Q. It was on about November 1st that you suffered this injury, wasn't it?

A. No, a different year.

Q. I am talking about 1938.

A. '37 I was injured.

Q. You are right. I am mixed up. All right.

Now, it was about November 1st that you first heard that the union had actually received applications, is that true?

A. Somewhere about November 1st, '38.

Q. '38. We are talking about 1938.

Trial Examiner Lindsay: We will stop now taking testimony. I have just one or two things I want to talk about and we will reconvene at 1:00 o'clock. It is just a few minutes of 12:00.

Mr. Clark: Yes, your Honor. [701]

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

(Here follows the testimony of the witnesses B. H. Carden and E. C. Powell in the preliminary examination in the matter of the People of the State of California, plaintiff, versus E. C. Powell, defendant, before the Honorable W. I. Nonhof, Judge of the City Court, Corcoran, California, on February 18, 1938, the same being at the direction of Trial Examiner Lindsay:)

B. H. CARDEN

called, sworn and examined as a witness, testified as follows:

Direct Examination

Q. (By Mr. Walch) Your name is B. H. Carden? A. Yes, sir.

Q. And you live here in Corcoran?

A. Yes, sir, I do.

Q. You are engaged in business in the City of Corcoran? A. I am.

Q. And that business consists of a lunch room?

A. Yes, sir.

Q. And at that same place you sell liquors and smoking paraphernalia, and so on?

A. Bar room. [702]

Q. Are you acquainted with the defendant in this action, E. C. Powell? A. I am.

(Testimony of B. H. Carden.)

Q. How long have you known him?

A. Oh, perhaps a year or a little longer.

Q. He trades with you, does he, in your place of business?

A. Yes, sir.

Q. Has he traded with you for some time?

A. Yes, ever since we owned the business, first of July.

Q. And have you ever received any checks from this man prior to the one here in question?

A. I have.

Q. And had no trouble with them?

A. Well, he always come and took them up the next day or a day or two after. I don't think he had any account. He always came and took the checks up. I never cashed one.

Q. You never have sent any back for presentation?

A. Well, from the bank here, he has.

Q. Oh, he has given you checks on the local bank of Corcoran?

A. Yes, and would come in the next day and take them up with cash.

Q. I see. Now, I will show you what purports to be a check which reads as follows: "Somerville, Georgia," Georgia being abbreviated, "January 17, 1938. Farmers and [703] Merchants Bank. Pay to B. H. Carden or bearer, \$15.00." Down in the left-hand corner: "Counter check" marked out and in its place put "Farmers and Merchants Bank," abbreviated, "Summerville, Georgia," Georgia abbreviated. Signed "E. C. Powell," and ask you if you

(Testimony of B. H. Carden.)

recognize that instrument. (Handing check to the witness.)

A. Yes, sir, I cashed that.

Q. On the 17th day of January?

A. On or about that time, I think.

Q. Now, this has " '28." Should that be " '38," or——

A. Why, it should be '38, yes. I never noticed it being that.

Q. Was this check made out and delivered to you by the defendant, E. C. Powell?

A. Made it out right on the bar and where I cashed it.

Q. At your place of business?

A. At my place of business.

Q. And what did you give him for it?

A. \$15.00.

Q. In cash? A. Three five dollar bills.

Q. I see. You don't know, I presume, what he used this money for? A. I think I do.

Q. What? [704] A. Playing poker.

Q. He went back and played poker. In your place of business? A. Uh huh.

Q. At the time he cashed it he hadn't lost that in a game, had he? A. How's that?

Q. At the time he cashed this check he hadn't lost this money in a game there, had he?

A. I couldn't tell you. He came up and asked me to cash another check. I had cashed one for sixty. A few days before that he brought it in there, made

(Testimony of B. H. Carden.)

out on the same bank, with Mr. Hammond's signature on it, and he asked me if I would cash it with his signature and I told him I would, we looked at it and recognized this signature so I cashed it.

Q. What happened to that?

A. I came back and Mr. Hammond made it good.

Q. I see. Now, this \$15 check——

A. It came back a few days later.

Q. I see. It was sent in for collection, came back?

A. It came back, and while it was gone in for collection Mr. Powell disappeared.

Q. You mean from the City of Corcoran?

A. From the City of Corcoran.

Q. And do you know where or how he was located? [705]

A. I do not. I know I heard where but I don't know how.

Q. I see. Have you had any conversation with Mr. Powell concerning this check? A. I did.

Q. What was that?

A. Well, I cashed that \$15 check and he went back in the card room and I told my son and the bartender, "If he comes up for any more personal checks to be cashed, don't cash any more because I think that one will come back." I says, "I cashed it on the strength of Hammond endorsing the \$60.00 one and he being from the same country, but I think it will come back." So it wasn't but a little while he came back and wanted me to cash another check and I said, "No, I have told the boys, we won't cash

(Testimony of B. H. Carden.)

another personal check for you." I says, "We'll wait and see what these we have already cashed do."

Q. Now, at the time he gave you this check did he say to hold it?

A. No, he said it was good. He said that check Hammond endorsed was good or he wouldn't have endorsed it, and this one is all right, so I cashed it. Then I made up my mind I wouldn't cash any more and I didn't.

Q. Have you talked with him any more since then?

A. I have not, not about checks. He was in a few times after that. [706]

Q. I see. Now, this check was given to you, delivered to you in your place of business in the City of Corcoran? A. It was.

Q. In the County of Kings, State of California?

A. It was.

Mr. Walch: I think that's all. Do you wish to ask him any questions?

The Defendant: No, sir.

E. C. POWELL

called, sworn and examined as a witness, testified as follows:

Direct Examination

Q. (By Mr. Walch) Your name is E. C. Powell?

A. Yes, sir.

Q. Where do you live, Mr. Powell?

(Testimony of E. C. Powell.)

A. I lived here about a year and a half.

Q. I see. Are you married? A. Yes, sir.

Q. Where is your family?

A. Down in San Bernardino.

Q. Of what does your family consist?

A. Wife and two children.

Q. How old are the children?

A. Five and three. [707]

Q. I see. When did you go to San Bernardino from Corcoran?

A. I went to San Bernardino from Los Angeles.

Q. Well, when did you leave Corcoran?

A. About six or eight weeks ago, or possibly two months. About six or eight weeks ago, I'd say, something in that neighborhood.

Q. Now, you know what the charge is?

A. Yes, sir.

Q. You received a copy of the complaint?

A. Yes, sir.

Q. You know Mr. Carden—you have heard his testimony, that on the 17th day of January of this year you did cash a \$15.00 check on the Farmers and Merchants Bank of Summerville, Georgia?

A. Yes, sir.

Q. And that he gave you three five-dollar bills for that check? Now, is there anything about that transaction or concerning this check that you want to tell us?

A. I just would like to make a statement.

(Testimony of E. C. Powell.)

Q. All right, go ahead, make a statment in your own words.

A. I gave the checks with no intention of beating them, but intended to make them good as I have made others, and I had no intention of beating them. When I could find employment to make them good I intended to do it, and I hadn't [708] been hid out or anything. I was under my same name and have given references here of employment of various nature.

Q. Now, let me ask you: When you gave this check you knew that you didn't have the money in that bank, didn't you?

A. I figured on making the checks good.

Q. That isn't what I mean. At the time you gave the check, you knew you didn't have the money in that bank but you intended——

A. To meet it.

Q. ——to go out and get some money and take it up. Is that right?

A. I intended to meet it there from money that was owed me and promised me.

Q. Where was this money owed to you?

A. Back in the East, in Georgia.

Q. I see. But it wasn't in the bank at that time——

A. No, sir.

Q. Did you actually have an account back there or wasn't there just—or, didn't you have any account at all?

A. No, I didn't have any account at the time.

(Testimony of E. C. Powell.)

Q. The same thing is true of that sixty dollar check that Mr. Hammond put his name on?

A. His name, you say?

Q. I say, is that true of the sixty dollar check, too, that was cashed by Mr. Carden on account of Mr. Hammond's— [709]

A. Yes, sir, Mr. Hammond endorsed it.

Q. —indorsing it. Have you got any other checks at this time outstanding, do you know?

A. No, sir, none.

Q. None? A. None.

Q. Have you ever had a checking account at the local bank here at Corcoran? A. No, sir.

Mr. Walch: That's all. Anything else you want to say? A. No.

The Court: No other statements you would like to give on your behalf? A. No, sir.

Q. And you have no witnesses at this time to testify, have you? A. No, sir.

The Court: Anything further, Mr. Walch?

Mr. Walch: That's all. I ask that he be held to answer. I'm not going to introduce the check at this time, your Honor.

The Court: It is the order of the court that the defendant be held to answer to the Superior Court. [710]

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:00 o'clock p.m., of the same date.) [711]

After Recess

(Whereupon, the proceedings were resumed, pursuant to recess, at 1:00 o'clock p. m.)

Trial Examiner Lindsay: The hearing is called to order.

Mr. Clark: The respondents are ready.

Mr. Mouritsen: Ready of the Board.

Mr. Clark: May I proceed?

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: May I have a moment?

Mr. Examiner, the original of the Local's charter in this instance was introduced as Board's Exhibit 4. Could the Board at this time have a photostatic copy made of the charter and substitute a photostatic copy in lieu of the original charter which the union desires to retain?

Mr. Clark: It would be perfectly satisfactory to me, your Honor, if the reporter would copy the contents of the charter into the record in something near the order it is in.

Trial Examiner Lindsay: No. I would rather have every exhibit substituted be an exact copy, and that privilege will be granted to all counsel in this hearing.

Mr. Clark: It is perfectly satisfactory to us that a photostatic copy be substituted.

Mr. Mouritsen: Very well. Thank you.

Trial Examiner Lindsay: I realize that many exhibits are [712] of such nature that the original must be returned to the owners, and, of course, that is always permitted.

Mr. Clark: May I just have a minute, Mr. Examiner?

Trial Examiner Lindsay: Yes.

EVAN C. POWELL

the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and further testified as follows:

Cross-Examination

(Continued)

Q. (By Mr. Clark): Mr. Powell, hadn't you heard of this union, and by that I refer to the local union in this proceeding, prior to the 1st of November, 1938?

A. I heard that there had been some attempts to organize before that.

Q. How early in 1938 did you hear that there had been an attempt to organize this union?

A. I heard that there had been a meeting in this hall for the purpose of explaining something along that line by Mr. Prior, the organizer.

Q. Are you referring to the meeting of July 13th?

A. I am referring—

Q. (Interrupting): Held in this hall, the American Legion Hall, in Corcoran?

A. I am referring to a meeting held in this hall, and to the best of my knowing, that was held in this hall. [713]

Q. Was that the meeting of July 13, 1938?

A. I couldn't say when that meeting was.

Q. Were you present at that meeting?

(Testimony of E. C. Powell.)

A. No, I wasn't.

Q. Did you receive an invitation to attend that meeting? A. I did.

Q. Now, after that meeting was held, did you learn whether or not any of the Boswell employees had joined the union?

A. Some time after that, along about the first of November, 1938.

Q. Well, didn't you hear that shortly after September 2nd, 1938?

A. No, I do not recall that I did.

Q. Shortly after September 2nd, 1938 didn't Mr. Farr approach you with an application to join the union? A. No, sir.

Q. Well, will you please tell us whether or not anyone approached you with an application to join the union shortly after September 2nd, 1938?

A. No, sir.

Q. Didn't you learn shortly after September 2nd, 1938, that Mr. Farr and Mr. Martin and Mr. Wingo had joined this union? A. No, sir.

Q. Did you hear anything at all about having—withdraw that. [714]

Had you discussed the matter of your joining this union with Mr. Prior at any time before November 1st, 1938? A. No, sir.

Q. When was the first time you met Mr. Prior?

A. On the night of November 16th, I believe, was the first time I ever met Mr. Prior personally.

Q. Didn't I understand you to testify in your

(Testimony of E. C. Powell.)

direct examination that you attended the installation meeting held on November 5th? A. No, sir.

Q. Well, didn't you testify that you have been present at the gathering of union men on the night of November 5th immediately before the business session started? A. No, sir.

Q. Are you positive of that? A. No, sir.

Q. Are you positive or are you not positive of that?

A. Well, if I get your question clearly, I did not attend any meetings prior to the night of just before I was initiated into the union.

Q. Do I understand, then, that you didn't attend any meetings until just before—well, until November 16th?

A. No, I had attended, as I recall, one meeting before that.

Q. And when was that? [715]

A. Just a short time before that.

Q. How long before?

A. Possibly a day, maybe two.

Q. I see.

So that you are quite sure that you hadn't attended any meetings of the union or any gatherings of union men just prior to a business meeting at any time prior to November 14th, we will say?

A. No, I had not.

Q. Now, you are positive of that, are you?

A. Positive.

Q. Didn't you know prior to November 1st that

(Testimony of E. C. Powell.)

Mr. Farr and Mr. Martin and Mr. Wingo were all members of this union?

A. I did not know. It was rumored.

Q. You had heard that rumor, hadn't you?

A. Yes.

Q. Do you remember who you heard that rumor from? A. I do not.

Q. Can you tell us how long before November 1st of 1938 it was that you heard that rumor?

A. Along about the 1st, around the 1st of November I heard that all the Mexicans that were employed on the night shift at that time had become members. That was hearsay, not knowing.

Q. I understand that. I am only asking for the approximate [716] time when you first heard that any of the employees at Boswell's had joined this union.

A. Along about the 1st of November.

Q. And not before that, is that true?

A. Not before.

Q. How about Mr. Farr and Mr. Martin? Had you heard that they had joined this union?

A. I had heard that they——

Q. (Interrupting): Prior to November 1st?

A. I had heard it rumored they were trying to organize for some time, but I don't know what period it was.

Q. That is exactly what I am interested in.

For what period of time prior to November 1st of 1938 had you heard it rumored that Mr. Farr and

(Testimony of E. C. Powell.)

Mr. Martin were attempting to organize this union?

Mr. Mouritsen: Objected to as calling for the rankest kind of hearsay, rumors. It is not substantial evidence on which a hearing of this kind can make a finding.

Mr. Clark: May I make a statement?

Trial Examiner Lindsay: It isn't necessary. You may answer.

The Witness: I heard various rumors. I don't know from what source, along about November 1st, around the latter part of September or about the first of November, that they were trying to organize here. [717]

Q. (By Mr. Clark): All right.

Were those rumors popular knowledge among the employees of the plant? A. Some of them.

Q. Well, I am thinking specifically about the rumor you called our attention to concerning Mr. Farr and Mr. Martin attempting to organize this union.

A. It was between Mr. Hammond and I.

Mr. Clark: I didn't hear.

Trial Examiner Lindsay: "It was between Mr. Hammond and I." Is that right?

The Witness: That is right.

Q. (By Mr. Clark): Did you hear that rumor from anyone else aside from Mr. Gordon Hammond?

A. Not exactly. Indirectly, I think I did.

Q. Do you remember how you heard it indirectly?

A. No, I don't.

(Testimony of E. C. Powell.)

Q. Was it from some other employe in the place?

A. It was.

Q. I see.

Now, you had known, hadn't you, or you had heard ever since July 13th, approximately, of 1938, that Mr. Prior was up here trying to organize the union?

A. I believe I heard something to that effect.

Q. Yes. [718]

Now, had you also heard, Mr. Powell, during the same period of time that you have told us you heard about the Farr-Martin rumor that Mr. Spear was connected with the union?

A. I heard of that, too.

Q. Yes.

When do you think was the first time you heard about that?

A. I don't recall the first time that I heard about it.

Q. Fix it as nearly as you can, please.

A. Well, I can testify the first time to my knowing.

Q. I don't care about your knowledge. I want to know when you heard this popular gossip or rumor in the plant that these men were attempting to organize this union.

Mr. Mouritsen: I object to counsel's statement of the classification of any rumor, because there has been no foundation laid. There is no showing as to the kind of rumor or the extent, or anything. I object to the question on the ground it is too vague and indefinite.

(Testimony of E. C. Powell.)

Mr. Clark: May I make a statement?

Trial Examiner Lindsay: I think the word "popular" should be out of the question.

Mr. Clark: Very well. I will eliminate that from the question. And may I have that question read back with that word eliminated from it?

Trial Examiner Lindsay: Yes. Read the question. [719]

(The question referred to was read by the reporter, as set forth above.)

The Witness: I think I—what was the question?

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: I think the word "first" should be in your question.

Mr. Clark: Very well. I will accept your amendment, Mr. Examiner.

The Witness: That was some time before November 18th, that I heard that.

Q. (By Mr. Clark): How long?

A. Approximately a month, or two months.

Q. Two months?

A. Maybe three, some time before.

Mr. Mouritsen: Now—

Mr. Clark (Interrupting): Just a minute, please.

Mr. Mouritsen: Here—in your question, Mr. Counsel, you stated November 1st, and I believe the witness stated November 18 in his answer.

Mr. Clark: That is all right, but I took November

(Testimony of E. C. Powell.)

18 and asked him how long before November 18th; and I think your answer was it may have been a month or two months, possibly three months, before November 18th—is that right?

The Witness: There was—correction. [720]

I am not stating that I heard any certain ones had. I stated I heard they were trying to organize.

Q. (By Mr. Clark): That is what I am after. That was with respect to Messrs. Farr, Martin, and Spear, isn't that so? A. No, sir.

Q. Who?

A. There had been an organizer here and held a meeting in this hall, and there was some endeavor to organize the J. G. Boswell Company plant.

Q. All right.

But the thing I am concerned with is when was the first time, as nearly as you can fix it now, that you heard about either Mr. Farr or Mr. Martin or Mr. Spear as attempting to organize the union?

A. Some time about the 1st of November.

Q. Was that the earliest time?

A. That was the earliest of those named, yes.

Q. You are positive of that?

A. I am positive.

Q. All right.

Hadn't you heard about a meeting held on October 8, 1938, between Mr. Prior and Mr. Gordon Hammond at which the reinstatement or re-employment of certain union members, namely, Mr. Martin, Mr. Boyd Ely, Mr. Farr, and Mr. George Andrade, was discussed? [721]

(Testimony of E. C. Powell.)

A. I have heard that testimony.

Q. No, no.

Hadn't you heard about that prior to November 1 of 1938?

A. I heard there had been a conversation and a meeting with the management, something concerning that. I wasn't at the meeting.

Q. I understand that.

And you heard that the meeting concerned the men whom I have named, didn't you?

Mr. Mouritsen: Objected to as vague and indefinite.

Trial Examiner Lindsay: He may answer if he knows.

The Witness: I heard something about a meeting that was held in the J. G. Boswell office, yes.

Q. (By Mr. Clark): And concerning these men I have named, to-wit: Mr. Martin, Mr. Boyd Ely, Mr. O. L. Farr, and Mr. George Andrade?

A. Some of those names I recall. I don't recall all of them.

Q. And from whom did you hear about that, please, if you remember?

A. That was discussed in our regular meetings.

Q. Well now, what do you mean, "our regular meetings"?

A. Local meetings.

Q. Well, when did you join this union? [722]

A. On November 16th I was initiated. I had made an application the day before that, approximately a day before.

(Testimony of E. C. Powell.)

Q. I see.

And, as I understand it, the first meeting which you attended was a couple of days prior to November 16th?

A. I was in on the gathering—however, I wasn't in on the meeting, because I had to be dismissed because I wasn't a member—on a meeting prior to November 16th.

Q. And I understand that was some two days prior?

A. It could have been the day before.

Q. Or the day before, is that right?

A. Something like that.

Q. All right.

Now, my question a few moments ago was, when was it that you first heard about the meeting of October 8th between Mr. Prior and Mr. Gordon Hammond concerning the re-employment of certain members of this union, to-wit: Messrs. Martin, Boyd Ely, Farr, and Andrade?

A. After I had become a member.

Q. All right.

You didn't hear about that prior to November 1st, is that right.

A. That is strictly union business. They didn't refer anything in their line to me until after I had become a member.

Mr. Clark: May I have a direct answer to the question? [723]

Trial Examiner Lindsay: The answer may stand.

(Testimony of E. C. Powell.)

I think he has answered it two or three different times.

Proceed.

Mr. Clark: All right. All right.

Q. Now, when was it, please, Mr. Powell, that you first had any conversation with Mr. Gordon Hammond—withdraw that.

Now, when was this conversation with Mr. Gordon Hammond, Mr. Powell, which you testified to on your direct examination and in which you say he asked you for certain information concerning the union? A. In the warehouse.

Q. When was it?

A. Some time about November, the first of November.

Q. Can you fix it any more definitely than that?

A. On or about the 6th, as I recall it, the 6th of November.

Q. The 6th of November.

And will you please—where did that take place, again?

A. In the main warehouse of the plant.

Q. All right.

And this—and in what particular section of the main warehouse?

A. Well, there was some two or three thousand sacks dumped—that had been lined up along the warehouse. We were lean- [724] ing up against some sacks there.

Q. Where was it in the warehouse?

A. Well, if you give me a blueprint of the ware-

(Testimony of E. C. Powell.)

house, I can give you the spot. If you don't understand it, I don't know.

Q. Can you tell us which part of the warehouse it was in?

A. It was in the main part. The main warehouse is only one large room. [725]

Q. In the Northeast corner?

A. Closest to the engine room.

Q. Closest to the engine room? A. Yes.

Q. In what part of the warehouse is the engine room?

A. In the West side of the building, facing this way.

Q. Closest to the Southwest corner of the warehouse, or the Northwest corner?

A. Closest, I should say, to the Southwest.

Q. I see.

So that this conversation you had with Mr. Gordon Hammond about November 6th, 1938, was in the Southwest corner of the main warehouse on the Boswell Company property here in Corcoran, is that true?

A. Well, I can describe it clearer by saying that it was in the first doorway as you enter the main gate, the first doorway in line with the first doorway of the main building after entering the main gate; as you enter the warehouse there are several doors on the side. The first door as you enter in a direct line with that door.

Q. And how far from the door?

(Testimony of E. C. Powell.)

A. Oh, I would say twenty feet.

Q. How close to these stacks of sacks?

A. Leaning on the elbow.

Q. You were leaning on them? [726]

A. Backed up against it like that (indicating).

Q. All right.

Now, there was no one else present, of course?

A. No one but Gordon and myself.

Q. What time of day was this?

A. I don't know whether it was morning or afternoon; sometime during the day.

Q. You don't recall whether it was morning or afternoon?

A. I would say it was in the morning.

Q. Have you any independent recollection on that?

A. Well, nothing more than I was reporting every morning what activities had gained thereon——

Q. (Interrupting): Now, let us have that answer.

Trial Examiner Lindsay: He has answered.

Mr. Clark: I can't hear it.

Trial Examiner Lindsay: Oh. Read it.

The Witness: I had reported on possibly every morning Mr. Hammond happened to come through; he varied in coming through, different hours of the day. Sometimes he would come through early in the morning, and at other times I wouldn't see him possibly before the afternoon.

Q. (By Mr. Clark): Now, what was this you were reporting to Mr. Hammond?

A. What was I reporting to him?

(Testimony of E. C. Powell.)

Q. Yes. [727]

A. Well, negotiations. He had an agreement that I would gain information and let him in on it.

Q. Information about what, please?

A. Union activities, who were in it, who were the leaders, who were the members and what not I could find out about it.

Q. I see.

Now, this was some ten days prior to the time you first attended any Union meeting, wasn't it?

A. Sometime before I attended Union meetings.

Q. Yes.

Now, the thing I am after, Mr. Powell, is the time, is the conversation which I thought I was asking you about, and at which any such arrangement between you and Mr. Gordon Hammond was first made.

When was that?

A. Any arrangement? First arrangements were made?

Q. Yes, for you to report any Union activities?

A. At that time.

Q. You mean at this very conversation?

A. That is right.

Q. That was located for us?

A. At that conversation.

Q. How did you happen to meet Mr. Hammond on that occasion?

A. I met Mr. Hammond every day, the time he would come through, talk about everything in general. [728]

(Testimony of E. C. Powell.)

Q. Well, I am not concerned with everything in general. I am concerned with your spying on this Union only.

A. You asked me how come.

Q. Now, just a minute. When is the first time—withdraw that.

How did you happen to meet Mr. Hammond, Mr. Gordon Hammond, on November 6th or on or about that date at this point in the main warehouse 20 feet from the main door, in a direct line with it, and when you and he were leaning up against these stacks?

A. I was in trucking sacks away from the main supply where it comes through out of the oil mill, the product comes through out of the oil mill, putting it back in the dump in the warehouse.

Q. Yes.

A. And Mr. Hammond came by and started a conversation with me.

Q. All right.

Was your meeting with him at that time pursuant to any prior arrangement between you and him?

A. No prior; no arrangement before that had been made, no.

Q. All right.

So that you hadn't been reporting each day to him about Union activities before this time, had you?

A. We had talked a little about it, but nothing in revealing [729] form; any activity.

Q. All right.

Now, when was the first time you talked a little bit about it?

(Testimony of E. C. Powell.)

A. On this particular occasion, on or about November 6th.

Q. Well, then, is it your testimony that this is the first time that you discussed your spying upon this Union? A. Yes, sir.

Mr. Mouritsen: Objected to, as it has been asked and answered a number of times.

Mr. Clark: I am still unable to get it clear. He has answered it now, apparently.

May I have the question and answer read?

Trial Examiner Lindsay: Yes.

Now, listen. Let us pay attention, please, to the questions and answers. It is an imposition upon a reporter to constantly have questions and answers read and re-read. Now, if we will all pay strict attention, we will get these things. Now, read the question and the answer.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark): With Mr. Hammond?

A. No one else I had discussed it with other than Mr. Hammond.

Q. All right.

Now, will you please tell us what Mr. Hammond said, and [730] what you said on this occasion?

A. Mr. Hammond said, "Coon, I understand the Union is trying to organize here." He said, "It is my opinion that the Company don't want it. They have been getting by a number of years managing

(Testimony of E. C. Powell.)

their own business. It is awful important. To start with, I don't know how you feel about this."

Mr. Clark: May I ask for the last part? I can't hear this witness.

The Witness: He says, "I don't know how you feel about the Union, but I do know as long as you don't have anything to do with it, that you will work here longer, you have a job here as long as you want it."

I said that was—he said, "It would be very important to me if I could get the facts of the activities, learn who is in on this meeting, who the leaders are, and members and prospective members, and in some way might be pressure—"I don't remember whether "pressure" or "scare"—"that could be enforced that might disencourage them." Something to that effect.

Q. Is that substantially all Mr. Hammond said to you on that occasion?

A. No, that is not all.

Q. Let us have it all?

A. I stated to Mr. Hammond—he asked me if I could obtain that information. I told him I thought I could, and he said [731] that if I would obtain that information, it would be mighty valuable to him.

I told him that that was quite a responsible position to do that kind, but that under the obligation that I was under to him, I would endeavor to do what I could.

Q. Now, is that all that he said, Mr. Gordon Hammond said?

(Testimony of E. C. Powell.)

A. He said, "You get in on one of these meetings and report back to me what you can find out."

Q. And what did you say to that?

A. I told him I thought I could, and would if I could.

Q. At that time did Mr. Gordon Hammond tell you that approximately two months before, namely in the last of August, 1938, he had had a discussion about the Union with Mr. Prior?

A. I don't recall him making that statement. He could have made it. I don't recall him making it.

Q. Did Mr. Gordon Hammond tell you on that occasion to which you have just testified that approximately a month before, namely on October 8th, he had had a meeting with Mr. Prior at which Messrs. Martin, Ely, Boyd Ely, Farr and George Andrade were disclosed to him as being Union members?

A. He could have made that statement. I don't recall it that he made it.

Q. Did Mr. Gordon Hammond tell you, as part of that conversation, that he had known for some weeks that Mr. Spear was a member of the Union? [732]

A. I don't recall him making that statement.

Q. Did he mention any of these gentlemen to you during that conversation?

A. I don't recall it that way.

Q. Would you say that he did not mention to you the names of Mr. Martin, Mr. Boyd Ely, Mr.

(Testimony of E. C. Powell.)

Andrade, Mr. Wingo, Mr. Farr and Mr. Spear during this conversation?

A. I would say that he did not make that statement.

Q. That he did not mention any of them, is that right?

A. Yes, due to the fact that he wanted me to gain this information, and I had my own conclusion that he didn't know; if he had known, what would he want me to do that for?

Q. You concluded he didn't know the names of anyone that belonged to that Union, is that right?

A. That was my conclusion, yes.

Q. Yes.

Now, how long was it, then, before you succeeded in getting into a Union meeting?

A. I got into a meeting that was held just prior to November 16th, at Farr's.

Q. Well, as a matter of fact, didn't you testify on your direct examination that the first meeting you attended was the one, the charter meeting, on November 5th?

A. I did not. If I stated that—I don't believe I stated that. If I did, I attended a meeting prior to November 6th— [733] I mean the 16th—and I was in a meeting—the first meeting I was at at Mr. Farr's house was just before November 16th. I do recall.

Q. You are quite positive of that, are you?

A. Positive.

(Testimony of E. C. Powell.)

Mr. Clark: In that connection, Mr. Mouritsen, I am directing the witness's attention to page 590 of the transcript, being part of Mr. Powell's direct examination, commencing at line 1, over to page 592, line 19, and I will ask you please, Mr. Powell, to read your testimony on direct examination from the places I have just indicated, that is, page 590 line 1, over to page 592, line 19, so you may get it in mind.

The Witness: (Examining document): Here is a misunderstanding here, about this, "May." I couldn't have said that; I was in stir in May.

Mr. Clark: Let the record show that the witness is indicating the word "May" on line 18 on page 589 of the transcript, which is not the part I am directing his attention to.

I might state with respect to that word "May," Mr. Powell, that I noticed that, too, and I think it is probably an error that we can clear up by stipulation. I am not asking you about that. I am asking you to start——

A. (Interrupting): I just saw that.

Q. I understand that. You just take your time on it.

A. (Examining transcript): This entire page? [734]

Q. Yes. You read that entire page and get it in mind.

A. (Examining transcript).

(The transcript referred to was passed to Mr. Clark.)

(Testimony of E. C. Powell.)

Q. (By Mr. Clark): No, I don't think you went over to the last part which was line 19 of page 592.

A. (Examining transcript).

Q. Now, have you read all of it? A. Yes.

Q. I want to ask you, Mr. Powell, whether or not, or rather whether it isn't the fact that yesterday, May 23rd, on your direct examination by Mr. Mouritsen in this proceeding, the following questions were asked you, and the following answers given by you, commencing at line 1, page 590 of the instant transcript, to and including line 19, page 592:

“Q. Now, where did this next conversation take place with Mr. Gordon Hammond?”

“A. In the warehouse.” [735]

“Q. Was anyone else present?”

“A. No.

“Q. Will you state what you said at that time to Mr. Gordon Hammond and what he said to you?”

“A. I told him that I had been in on one of the meetings and told him the president, and secretary and treasurer, and vice president, and the office of the union, the ones that were present there.

“Q. Well, will you state the names of those people—strike that.

“Did you state to Mr. Gordon Hammond the names of the people who held those offices?”

“A. I did.

(Testimony of E. C. Powell.)

“Q. Will you state the names that you gave to Mr. Gordon Hammond on that occasion?

“Mr. Clark: May I have the date of this, please?

“Trial Examiner Lindsay: This is the 9th, as I understand it.

“Mr. Clark: Of November.

“Trial Examiner Lindsay: 1938.

“Q. (By Mr. Mouritsen): Will you state the names of those officers that you named to Mr. Gordon Hammond?

“A. I told him Mr. Lonnie Spear was president, Mr. O. L. Farr was the vice president, Mr. R. K. Martin was secretary and treasurer, and I mentioned others present. [736]

“Q. Did you name their names to him?

“A. I did.

“Q. Will you state all of the names that you can recall that you named to him as being present at that meeting?

“A. Other than the ones I have mentioned, George Andrade, Elgin Ely, Steve Griffin, Pete Wingo, and Johnston—I do not know his initials. I do not know Johnston’s initials—but Johnston, anyway, and Joe Briley, Boyd Ely, and myself.

“Q. Was that—do you recall any further conversation that you had with Mr. Gordon Hammond at that time?

“A. Well, I mentioned that I was in that

(Testimony of E. C. Powell.)

meeting and found those present there, but when the business end of the meeting came up, I had to be dismissed, not being a member at that time; and I couldn't get anything further in that. And I believe that I mentioned that there was a charter. I have seen a charter of the American Federation of Labor that was installed that night.

“Q. Now, Mr. Powell, previous witnesses have testified that a meeting of the union was held at which a charter was installed on or about November, 1938.

“If I tell you that the date of the charter meeting was November 5, 1938, how long afterwards did this conversation that you had with Gordon that you have just discussed take place? [737]

“A. After the meeting of the 5th?

“Q. No, after the charter meeting, a meeting of the union at which the charter was installed. How long after this conversation that you had with Gordon Hammond take place?

“A. (Pause).

“Trial Examiner Lindsay: Do you understand the question?

“The Witness: I do not understand it.

“Q. (By Mr. Mouritsen): I believe you have testified that you attended a meeting of the union at which a charter was installed, is that correct? A. I did.

(Testimony of E. C. Powell.)

“Q. Now, how long after you attended that meeting did you have a conversation with Mr. Gordon Hammond that you have described?

“A. It was the next day I was telling him about the charter, or the next morning.

“Q. Okay.”

Now, did you give that testimony under oath here yesterday?

A. I give that testimony, but there is some confusion on someone, not myself.

Q. As a matter of fact, you didn't attend the charter meeting on November 5th, did you? [738]

A. Not November 5th.

Q. Nor any charter meeting? A. Yes, sir.

Q. When?

A. First I saw the charter was November 16th, I believe.

Q. I am talking about the meeting at which the members of this union installed their charter from the American Federation of Labor that is in evidence in this case.

A. That charter was installed, to my understanding, that night.

Q. You mean the night of the 14th or 15th?

A. The night of the 16th.

Q. That was your understanding, was it?

A. Yes.

Q. Were you present when it was installed?

A. I was there, first I had seen a charter, first

(Testimony of E. C. Powell.)

anyone else seen it; Mr. Prior just brought the charter up.

Q. Pardon me. Continue.

A. Mr. Prior and another party who I now am acquainted with, but at that time I was not acquainted with.

Q. What is his name? A. Alderson.

Q. What is his position?

A. He is from down south some place. I don't know his position. [739]

Q. Did you understand him to be some union representative that is affiliated with the American Federation of Labor? A. I did.

Q. Was there a ceremony at the meeting that you are discussing at which the charter was installed?

A. Well, there were some members taken on that night, as I recall.

Q. I am talking about the installation of this charter for this local union. Was there a ceremony concerning that?

A. Not concerning the charter that I recall, no.

Q. What happened then, without disclosing any of the union secrets, which leads you to testify in this case that the charter which the evidence shows in this matter was installed on November 5th was installed in this meeting immediately prior to November 16 that you are telling us about?

Mr. Mouritsen: I object—

Mr. Clark: (Interrupting): I will submit it.

(Testimony of E. C. Powell.)

Mr. Mouritsen: I object to the question, Mr. Examiner, as misleading and double-barreled, vague and indefinite; and not in accord with the witness' prior testimony.

Mr. Clark: I will admit it is not in accord with the witness' prior testimony all right. (Laughter).

Trial Examiner Lindsay: Now, let us not have any laughing in here. I said the other day that anyone who laughs during this hearing is going to be put out of this [740] hall. It is hard enough here to hear without having someone laughing and interrupting.

Now, may I have the objection and the reasons read?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Well, he may answer if he understands the question.

Mr. Clark: May I ask that the question be re-read, Mr. Examiner, so he will have it clearly in mind?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: May I have that read again? I am not so sure that I understand it.

(The record referred to was re-read by the reporter as set forth above.)

Trial Examiner Lindsay: Do you understand it?

(Testimony of E. C. Powell.)

The Witness: I understand it. Because I had not been to but one meeting prior to November 16th, at which time I was dismissed before any union activities were revealed. However, I returned on application to Mr. Lonnie Spear's house within the next night, if I recall it, and made application to join the union at November 16th; I was initiated and, therefore, it was the first time I saw the charter, knowing that there had been a charter. [741]

Q. (By Mr. Clark): And this first meeting that you refer to, I take it, is the one which you told us was a day, or possibly two days prior to November 16th, is that true? A. Yes.

Trial Examiner Lindsay: I think if you call that a gathering, as this witness has described it—

Mr. Clark: (Interrupting): Let me put the question this way. I think he called it a meeting.

Trial Examiner Lindsay: He said he was put out of the meeting, but that it was a gathering.

Q. (By Mr. Clark): This gathering or meeting which you were put out of because you hadn't yet joined the union, filed your application, was that meeting or gathering a day, or possibly two days, prior to November 16th?

A. Before November 16th.

Q. Your answer to that is yes? A. Yes.

Q. As a matter of fact, you didn't have any conversation with Mr. Gordon Hammond on November 9th concerning any information that you had acquired about this union, did you?

(Testimony of E. C. Powell.)

A. Yes. I had information that was hearsay, not knowing—of course at that time you could hear a lot, lots of rumors being put around, lots of facts, too.

Q. I see. [742]

In other words, it was pretty common gossip in the plant that certain men had become members of the union, or wanted it organized, and certain others didn't, isn't that true?

Mr. Mouritsen: Objected to as vague and indefinite, no definite period.

Mr. Clark: I will submit it. I am not calling for the substance of it, I am interested—

Trial Examiner Lindsay: (Interrupting): He may answer.

Mr. Clark: Yes.

The Witness: General opinion of the entire employment that there was being a union organized there, wondering who was in, who was who and what-not.

Mr. Clark: I see.

Trial Examiner Lindsay: I think we will have to adjourn and get this hall in shape for the people who are coming in here.

Mr. Clark: Yes, your Honor.

Trial Examiner Lindsay: We will meet in the morning at 9:30.

(Thereupon, at 1:50 o'clock p. m., an adjournment was taken until 9:30 o'clock a. m., Thursday, May 25, 1939.) [743]

American Legion Hall,
Corcoran, California,
Thursday, May 25, 1939. [744]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The Respondents are ready, Mr. Examiner.

Mr. Mouritsen: Ready for the Board, Mr. Examiner.

EVAN C. POWELL

the witness on the stand at the time of adjournment, resumed the stand and was further examined and testified as follows:

Cross Examination (Continued)

Mr. Clark: Now, Mr. Examiner, may I call your attention, and also the attention of counsel, to page 732 of the transcript of yesterday, and particularly line 13, or rather, commencing with line 11, reading:

“At that time did Gordon Hammond tell you that approximately two months before, namely in the last of August, 1938, he had had a discussion about the Union with Mr. Prior?”

I think that if you will examine that testimony, Mr. Mouritsen, with relation to the material before and after, you will see that that reference to Mr. Prior should be Farr, and I think the reporter's notes will show that, too.

(Testimony of E. C. Powell.)

Trial Examiner Lindsay: I definitely remember the question yesterday, and you did say Mr. Prior, and I wondered at the time—that was your question?

Mr. Clark: Of course my recollection of it is I said "Farr," Mr. Examiner, and just so we will not waste any time on it, I will ask the witness that at this time. [746]

Q. Mr. Powell, directing your attention to the conversation which you said you had with Mr. Gordon Hammond on November 6th, 1938, I will ask you whether or not at that time he stated to you that approximately two months before, namely in the last of August, 1938, he had had a discussion about the Union with Mr. Farr?

A. He could have. I don't recall in making that statement.

Q. Will you say that he did not make that statement to you?

A. I would not state that he did not make it.

Q. Very well. Now, may I ask you also, Mr. Powell, whether the conviction of a felony in the State of Georgia, to which you testified to yesterday, was for murder? A. It was not.

Q. What was it for, please?

A. May I have the question re-read?

(The question referred to was read by the reporter, as set forth above.)

The Witness: The conviction that I did get?

Q. (By Mr. Clark): Yes.

A. For stabbing.

(Testimony of E. C. Powell.)

Q. For stabbing? A. Yes.

Q. Well, did that result in the death of the person you stabbed?

A. It did not; the fellow recovered. [747]

Q. He fully recovered.

How old are you, please?

A. Thirty-eight.

Q. Now, as a matter of fact, you had no further conversations with Mr. Gordon Hammond at which you gave him any information about this Union after November 6th, 1938, until the morning of November 17th, is that not true?

A. I had a conversation with him continuously about every day or so.

Q. Commencing when, please?

A. During that time, from November 1st to November 16th.

Q. Well, by "November 1st" do you refer to the time of your first conversation with Mr. Gordon Hammond respecting the subject matter and about which you testified yesterday?

Mr. Mouritsen: I object to that as too indefinite.

Mr. Clark: I will withdraw the question—

Trial Examiner Lindsay: (Interrupting): Try to make the question—

Mr. Clark: (Interrupting): And try to establish the time again.

Q. Do you remember that yesterday you testified that the first conversation you had with Mr. Gordon Hammond respecting your obtaining any informa-

(Testimony of E. C. Powell.)

tion concerning this Union was on November 6th?

A. No—I had a conversation on November 6th with Mr. Hammond. [748]

Q. Wasn't that the first conversation you had concerning this subject?

A. No, it was not.

Q. Well, didn't you testify yesterday on your cross examination that it was the first time you had any conversation with him concerning—

A. (Interrupting): I did, but now I am mistaken in that testimony about the date.

Q. You did so testify yesterday?

A. I did, but I am mistaken about the date. I have papers showing how I was confused in that time, the date, and I know it should be November 5th in place of the 16th, the first meeting I attended.

Q. Well, have you talked to anybody about it?

A. I talked to my wife about it yesterday. She called my attention to it after the testimony yesterday and said, "You were mistaken about the date," and asked me if I didn't remember what occurred the night of this meeting. Looking through some papers I had and refreshing my mind on it, there was a dance in this hall that I was going to attend that night, and Mrs. Martin came by and told my wife that they were having a meeting at O. L. Farr's house that night and invited me to attend; therefore I didn't go to the dance and did go to the meeting. I had a Company pick-up truck that night.

Q. Have you anything further to add? [749]

(Testimony of E. C. Powell.)

A. What is that?

Q. Have you anything further to add to that?

A. I am positive now that it was November 5th in place of the 16th. [750]

Q. All right.

Now, was your wife present in court yesterday when you gave your testimony?

A. Yes, she was.

Q. And do I understand that your conversation with your wife concerning your testimony was after court had adjourned yesterday afternoon?

A. Yes, it was.

Q. Did you not hear the admonition of his Honor that you were not to speak to any person concerning your testimony while you were giving it?

A. Not my wife. A man has a right to talk to his wife anytime she desires to talk to you.

Q. Even concerning this subject?

A. I guess so.

Q. Have you discussed the matters you have just stated on the stand with anyone else other than your wife about what you stated yesterday?

A. My counsel.

Q. Your counsel? A. Yes.

Q. Who is that, please?

A. Mr. Mouritsen.

Q. You discussed it with Mr. Mouritsen?

A. With Mr. Mouritsen and with Mr. Prior. [751]

Q. With Mr. Mouritsen and with Mr. Prior?

(Testimony of E. C. Powell.)

A. Yes, sir.

Q. And with Mr. McTernan? A. No, sir.

Q. And when did you discuss this correction, if you can call it that, in your testimony with Mr. Mouritsen?

A. I discussed the entire hearing with Mr. Mouritsen.

Q. You mean since yesterday afternoon?

A. All of the time since the hearing started.

Q. I am talking particularly about since you got on the witness stand. A. Why, yes.

Q. Is it your testimony, Mr. Witness, that you have been discussing your testimony, that is, the evidence that you have been giving here, with Mr. Mouritsen while you were in the progress of testifying, that is, during the recesses and during your testimony?

A. In regard to mistaken identity and the dates, yes.

Q. How about Mr. Prior? Have you had similar discussions with him during this similar period of time you have been on the stand?

A. Mr. Prior asked me if I recalled a certain date. I didn't have it in mind and I went home and verified it by a telegram I had there.

Q. When did Mr. Prior ask you that? [752]

A. Yesterday.

Q. When?

A. I don't recall just when it was.

Q. Was it after court adjourned?

(Testimony of E. C. Powell.)

A. I don't recall whether after court adjourned or not. This particular date he was referring to me was not concerning yesterday's testimony at all.

Q. Well, it was concerning your testimony, though, wasn't it?

A. Yes, my testimony; but not yesterday's testimony.

Q. Did you not hear his Honor's admonition to you and to all witnesses in this case that they were not to discuss their testimony with anyone whatsoever while they were on the stand and giving it and during the recesses taken?

Mr. Mouritsen: Mr. Examiner, was that a correct statement of your Honor's admonition?

Trial Examiner Lindsay: No. I stated—I added, outside of counsel in this case.

I don't understand that in any court the witness doesn't have a right to talk to counsel.

Mr. Clark: I understand that to be your Honor's admonition.

Trial Examiner Lindsay: That was my instruction, outside of counsel in the case.

I had no thought in mind about a man's wife or anything [753] about that. I meant I didn't want any witness discussing it pro and con with others in the court room who might be interested in the case; and I think that is a proper instruction.

Now, I don't believe that I would have a right to instruct the witness not to talk to counsel in the case. I have never done that and I don't believe

(Testimony of E. C. Powell.)

that it is right. It has never been done to me in a trial of any case that I have ever been in as counsel. Now, if there is any rule here in your State—but I am sure there isn't—

Mr. Clark: (Interrupting): Of course, there isn't.

Trial Examiner Lindsay: Counsel in the case have a right—

Mr. Clark: (Interrupting): May I finish my statement?

Trial Examiner Lindsay: Yes.

Mr. Clark: Of course, there isn't; but I understood that to be your admonition.

Trial Examiner Lindsay: That couldn't have been if you had listened to what I have said. If you want the record read back, I will have it read.

Mr. Clark: The record speaks for itself.

Q. Mr. Prior, did you discuss your testimony with anyone else yesterday?

A. No one other than counsel and my wife.

Trial Examiner Lindsay: The question is wrong. It is Mr. Powell. [754]

Mr. Clark: Yes. May that be changed in the record?

Q. Did you discuss your testimony with anyone else?

A. None other than counsel and my wife. [755]

Q. As a matter of fact, you have been together evenings, part of them, together with counsel for the Board and Mr. Prior in the room where this testimony has been written up?

(Testimony of E. C. Powell.)

A. Not in the room where the testimony has been written.

Q. You have been in the hotel?

A. I have a room in the hotel.

Q. Are you living there now?

A. At this particular time, no. The night before last I stayed in the hotel.

Q. I see.

And the night before last didn't you spend the evening with counsel for the Board and Mr. Prior, and weren't you present while the record was being written up in this matter?

A. I wasn't present while the record was being written up.

Q. While the reporter was writing up the testimony?

A. I was not around the reporter at all.

Q. Weren't you in the room while the record was being written up? A. No.

Trial Examiner Lindsay: Let us go on with something else.

Mr. Clark: I have a right to go into it so long as it is within proper bounds.

Trial Examiner Lindsay: You have gone into it plenty. Proceed.

Q. (By Mr. Clark): Didn't you on that evening, that is, the [756] night before last, go over those dates and all of your testimony with counsel for the Board?

A. I discussed my testimony with counsel.

(Testimony of E. C. Powell.)

Trial Examiner Lindsay: That has been gone into.

Mr. Clark: Very well. I am proceeding, Mr. Examiner.

Q. The thing I am interested in is this, Mr. Powell: Hadn't you ascertained the date you told us about this morning, that is, the November 5th date, prior to the time you first took the stand to testify in this matter?

A. I only discovered the identity by papers where I was mistaken in previous testimony in reference to the date. I discovered I was mistaken in that testimony, and I wanted to correct it and make it as it was.

Q. Do I understand that you only discovered that mistake since court adjourned yesterday?

A. I did.

Q. Is that true? A. That is true.

Q. You spoke of referring to some papers which enabled you to fix the date while you were discussing the matter with your wife yesterday afternoon.

Have you that paper with you?

A. I have.

Q. May I see it?

A. (Indicating document): This is the telegram that Mr. R. K. [757] Martin handed me stating that Mr. Prior was to be up here and would like for me to meet him. Mr. Prior did not fill this appointment that he referred to in this telegram; and in the meantime, I in some way became in possession

(Testimony of E. C. Powell.)

of the telegram I have here at home, and I had it in an envelope with some names.

I remember distinctly now, and as I said before, that the night I saw this charter was on November 5 and Elgin Ely, a former employee of the Company, I had learned, had become a member that night.

And Mr. Prior didn't fill this appointment that he was supposed to, but he did come on November 5th.

Q. By "this appointment—" or, rather, when you stated "this appointment," you have pointed to a telegram which you have handed me, and which I hold in my hand.

I would like, may it please the Examiner, to have this telegram marked for identification as the Respondent Boswell's Exhibit next in order.

(Thereupon, the document above referred to was marked as Respondent Boswell's Exhibit 4 for identification.)

Q. (By Mr. Clark): This telegram isn't addressed to you? A. No, sir.

Q. It is addressed to Mr. R. K. Martin?

A. Yes, sir.

Q. When did you first receive it from Mr. Martin? [758]

A. Some few days after he told me that Mr. Prior would be up here.

Q. Do you remember the circumstances under which you received this telegram from Mr. Martin?

(Testimony of E. C. Powell.)

A. Just in the conversation with him. He told me that the organizer was supposed to be here, and I had never met him and he would like to have me hear what he had to say.

Q. Where was this conversation?

A. This conversation was with Mr. Martin you are speaking of.

Q. Yes.

A. That was down in front of Oliver Farr's house.

Q. And when was it, as near as you can fix it, with respect to October 29th, 1938?

A. It comes to my mind it was the next day after the telegram came.

Q. That would be October 30th? A. Yes.

Q. Do you remember anyone else being present?

A. No, I don't remember anyone else being present.

Q. And as I understand it, Mr. Martin told you that Mr. Prior would be up on that day, that is, October 30th, to see you?

A. I was looking for him up here. He said he would be up, and I was looking for him. [759]

Q. And that Mr. Prior would be up on that day, namely, October 30th, is that right?

A. I say he was supposed to be up.

Q. I see.

Do I understand that Mr. Martin handed this wire to you to keep?

A. He didn't hand it to me to keep.

Q. But you kept it? A. Yes.

Mr. Clark: I offer it in evidence.

(Testimony of E. C. Powell.)

Trial Examiner Lindsay: It may be received.

(Thereupon, the document above referred to was received in evidence and marked as Respondent Boswell Company's Exhibit No. 4.)

Mr. Clark: It is very short. I would like to read it into the record.

Trial Examiner Lindsay: It isn't necessary. It speaks for itself.

Mr. Clark: It only consists of five words. I would like to read it.

Trial Examiner Lindsay: It is already in the record. [760]

Mr. Clark: Very well.

Q. You will notice, Mr. Powell, that this telegram states, it being dated October 29, 1938, and addressed to Mr. R. K. Martin, simply that Mr. Prior will be in Corcoran tomorrow.

A. I think that is the way it is worded.

Q. Without any reference at all to you.

A. No reference to me whatsoever. It is merely that Mr. Martin gave me the telegram, stated that he was looking me up and I kept the wire intending to hand it over to Mr. Hammond. I never did.

Q. You never showed it to Mr. Hammond?

A. No, sir.

Q. All right.

How long was it prior to October 29th that you first discussed with Mr. R. K. Martin anything about this union?

(Testimony of E. C. Powell.)

A. I don't recall discussing anything because at that time I wasn't interested in the union.

Q. How did it happen then that Mr. Martin met you for the purpose of delivering the wire to you?

Mr. Mouritsen: I object to that as assuming facts not in evidence and misleading.

Mr. Clark: I will withdraw that question.

Q. How did it happen that Mr. Martin met you on the occasion of October 30th at which he delivered the wire marked respondent Boswell's Exhibit 4 to you? [761]

A. I am just presuming that Mr. Martin was looking for anyone interested in that line, and contacting anyone that was interested in this line. Martin and I are very close friends.

Q. You and Martin are very close friends?

A. I presume we are. I know nothing to the contrary.

Q. How long prior to October 29, 1938, had you and Martin been very close friends?

A. Since my arrival in California in 1936. I have known Mr. Martin practically all his life.

Q. And during the fall of 1938, that is, since July 3rd, upon which date you returned to employment at the Boswell Company, did you see Mr. Martin frequently? A. Every day.

Q. Every day. And did you pass time with him socially? A. I presume.

Q. Did you have a drink with him now and then?

Mr. Mouritsen: Objected to as immaterial.

(Testimony of E. C. Powell.)

Trial Examiner Lindsay: Sustained.

Q. By Mr. Clark: And is it your testimony, Mr. Powell, that at no time during the fall of 1938 did Mr. Martin make known to you the fact that he was attempting to organize or was organizing this union?

Mr. Mouritsen: Objected to as indefinite.

Mr. Clark: That is fixed after July 3rd, 1938. [762]

Trial Examiner Lindsay: Read the question.

(The record referred to was read by the reporter, as set forth above.)

The Witness: That is news to me. I never knew of Mr. Martin being an organizer. I never heard of that before.

Q. By Mr. Clark: Never heard of that before?

A. Not being an organizer.

Q. Didn't you testify you heard rumors along in 1938 that Mr. Martin and Mr. Farr were attempting to organize this union?

A. I have heard various rumors.

Q. So you have heard that rumored, haven't you? A. Yes, I have heard lots of rumors.

Q. Didn't you ask Mr. Martin whether these rumors were true?

A. I might have asked Mr. Martin lots of things. Mr. Martin might have told me lots of things. I don't know anything along that line.

Q. Is it your testimony, Mr. Powell, that at no

(Testimony of E. C. Powell.)

time from July 3rd, 1938, did your close friend, Mr. Martin, tell you that he had joined this union, up to November 1st?

A. I never knew positively that Mr. Martin had joined the union until the night of November 16th.

Q. I see.

That was the night you first attended a meeting, is that [763] true?

A. No, it was not; November 5th I first attended a meeting.

Q. You didn't find out at the meeting of November 5th that Mr. Martin was a member?

A. No, I did not.

Q. I see.

A. He was present at that meeting, but I didn't know he was a member, definitely or not.

Q. I see.

And you had never discussed the matter of either his joining or your joining this union with him prior to that time, is that true?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial; already asked and answered.

Trial Examiner Lindsay: Sustained. Now let us proceed with the examination along lines that have not been touched upon.

Q. By Mr. Clark: May I have the other document you referred to as enabling you to fix the date of November 5th?

A. This is an application form I made out on that date.

(Testimony of E. C. Powell.)

Mr. Mouritsen: May I have that answer read, the question and the answer?

I ask the witness to pay particular attention to the question and answer.

(The record referred to was read by the reporter, as set [764] forth above.)

Mr. Clark: I think that is responsive.

Trial Examiner Lindsay: Well, "on that date" is confusing. You mean on the date of that document there?

Q. By Mr. Clark: On the date of the document or on November 5, which?

Trial Examiner Lindsay: Show him the document.

Mr. Clark: Just a minute, may it please the Examiner. I will ask that the witness give me the date. He has just had the document in his hands. He said it enabled him to fix the date——

The Witness (Interrupting): Of this document?

Q. By Mr. Clark: Yes.

A. On the 11th of November.

Q. On November 11th?

A. That is right.

I ask that the document just handed me by the witness be marked for identification, your Honor.

(Thereupon the document above referred to was received and marked Respondent Boswell's Exhibit No. 5 for identification.)

Mr. Mouritsen: May I see it?

Mr. Clark: Oh, surely.

(Testimony of E. C. Powell.)

(The document referred to was passed to Mr. Mouritsen.)

Q. By Mr. Clark: Now, what is this document you have just handed me? [765]

A. That is an application for the union.

Q. When did you sign it?

A. On that night, the 11th.

Q. On November 11, 1938? This is the first application you made for membership?

A. That is the one.

Q. And to whom did you deliver it, if anyone?

A. Mr. R. K. Martin.

Q. And when, please?

A. On the night of November 11th.

Q. And where?

A. In Mr. Spear's house, Loonie Spear's.

Q. I see. Now, I want to direct your attention to a word in ink which follows the printed words "my health is good," and I will ask you if you will tell me what that word written in ink is?

A. Fair.

Q. Fair. I see. This is all in your handwriting?

A. Not all, no.

Q. What part is not?

A. That (Indicating).

Q. You mean the name of the union, Cotton Products and Grain Mill Workers' Union, Local No. 21798?

A. That is right. This is my signature and this is my writing. [766]

(Testimony of E. C. Powell.)

Q. Pointing to "E. C. Powell" is your signature? A. That is right.

Q. And the rest of it is all in your handwriting, is that right? A. It is.

Q. All right.

In whose writing is the name of the union?

A. Mr. R. K. Martin's.

Q. I see.

Was it upon the strength of this application that you were admitted to membership in the union?

A. It was.

Q. And when were you admitted to membership in the union?

A. November 16th, on the night of November 16th.

Q. Very well.

We offer the document just identified by the witness in evidence, your Honor, as Boswell's Exhibit 5.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: Received.

(Thereupon the document above referred to was received in evidence and marked as Respondent Boswell's Exhibit No. 5.)

BOSWELL'S EXHIBIT No. 5

Affiliated with The American Federation of Labor, The California State Federation of Labor, San Pedro-Wilmington Central Labor Council and Long Beach Central Labor Council.

(Testimony of E. C. Powell.)

Cotton Products & Grain Mill Workers
Union No. 21798

California State Council of Soap & Edible Oil
Workers of California

Office: 309 Broad Ave., Wilmington, Calif.
Telephone 1455

Date 11/11th, 1938.

I, E. C. Powell, do hereby make application to your honorable body for membership, and pending my final acceptance as a member, I hereby designate the American Federation of Labor and/or its affiliated union No. 21798, as my exclusive representative for purposes of collective bargaining. Should my application meet with your approval, I promise faithful obedience to the Laws, Rules and Regulations of your union.

I am employed by J. G. Boswell Co.

My duties are Warehouse Worker and Laborer.

How long employed? (2) two years.

Date of birth? Dec. 23, 1900.

My health is good. *Fare.*

My Beneficiary is Mrs. E. C. Powell.

Address #1140 Norboe St.

Phone.....

Name E. C. Powell.

Application presented by.....

(If initiation fee is not paid in full or applicant is not initiated within 30 days all money paid shall be forfeited.)

[Endorsed]: Filed 5/25/39.

(Testimony of E. C. Powell.)

Q. By Mr. Clark: How many conversations did you have with Mr. Gordon Hammond—

A. (Interrupting): Numerous—

Q. (Continuing) Just a minute—after the first conver- [767] sation you have testified to as having occurred on or about November 1st, 1938, up to 10:00 o'clock on the morning of November 18th?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I will submit that.

Trial Examiner Lindsay: He may answer.

The Witness: Numerous conversations. [768]

Q. (By Mr. Clark) Can you fix the number of them for us?

A. Could not fix—begin to fix the numbers of the conversations I have had with him during that time.

Q. Did you have as many as a dozen?

A. Yes. I have talked with Mr. Hammond every day during that time; practically every day.

Q. I am only concerned with conversations at which you gave him information about the Unions. You understand that, don't you?

A. Yes, I think so.

Q. And I am calling for the number of conversations, as nearly as you can fix them at this time, and just approximately, which you had with Gordon Hammond on that subject matter between your first meeting of about November 1st and 10:00 o'clock in the morning of November 18th?

(Testimony of E. C. Powell.)

A. I talked with Mr. Hammond about it all the time, every day or so, but there is some instances in my mind that I know of about the time they were.

Q. Well, give us those, if you can, just in order, as nearly as you re—can remember.

Mr. Mouritsen: Including the first.

Mr. Clark: Let us not bother with the first one.

Q. Take the next one after the first conversation?

A. The first negotiations on Union activity.

Mr. Clark: Just a minute. I will ask that that go out. [769]

Trial Examiner Lindsay: The second one he wants to know about, the second conversation.

Mr. Clark: The second conversation.

Trial Examiner Lindsay: I am sure if you put your questions plainly, the witnesses will understand them and try to answer them.

Now, this second conversation is the one that he is talking about.

Mr. Clark: I am asking the witness to give me the approximate number of conversations that he had with Mr. Hammond on this subject matter, Mr. Examiner.

Trial Examiner Lindsay: You asked so many questions together there—will you read back the record, Mr. Reporter?

(The record referred to was read by the reporter, as set forth above.)

(Testimony of E. C. Powell.)

Trial Examiner Lindsay: Which are you asking for, the number or the second one? You have two questions.

Mr. Clark: I will stand on the last question and ask that it be read to the witness.

Trial Examiner Lindsay: I want the first one answered. Now——

Mr. Clark (Interrupting): I would like the record to show——

Trial Examiner Lindsay (Interrupting): Just a minute.

Mr. Clark (Continuing) ——just a minute, Mr. Examiner. [770]

Trial Examiner Lindsay: Just a minute. You——

Mr. Clark (Interrupting): Let me make my statement plain.

Trial Examiner Lindsay: Just a minute. Let us understand each other.

When I start to talk, I am not going to be interrupted any more.

Now, the purpose of this hearing is to go along in a smooth manner and get the testimony. The purpose is not to have two or three questions put to a witness at once, without giving him an opportunity to answer them. Witnesses in any trial in a court are entitled to a reasonable amount of protection from compound questions, unreasonably long questions, and when a question is asked, unless the question is withdrawn—you haven't withdrawn that question—the question should be answered.

(Testimony of E. C. Powell.)

Now, if you wish to withdraw your question, which has not been answered, then you may withdraw it, but I want the record completed. I don't want questions in there that have not been withdrawn and have not been answered, because our record is not complete then.

Now, that one question, which has not been answered, followed by another question, now, either one or the other should be withdrawn and let us proceed.

Q. (By Mr. Clark) Well, I will ask, Mr. Witness, this ques- [771] tion: Can you tell us approximately how many meetings—

Trial Examiner Lindsay (Interrupting): You don't withdraw either of those two questions?

Mr. Clark: I think I would rather have the record stand just as it is, Mr. Examiner. I would like the record to show exactly what is happening in this proceeding.

Trial Examiner Lindsay: Yes. You are just confusing—

Mr. Clark (Interrupting): I would like everything to be on the record.

Trial Examiner Lindsay: All right. You are refusing to comply with my request, then, to either have that question answered or withdrawn? I want the record correct, that is all. If that is your method, it may remain.

Mr. Clark: Now may I proceed, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(Testimony of E. C. Powell.)

Q. (By Mr. Clark) Now, Mr. Powell, will you please tell us approximately how many meetings you had with Mr. Gordon Hammond concerning this Union between your first meeting, which you said was on November 1st, 1938, and 10:00 o'clock in the morning of November 18th?

A. Several.

Q. Now, can you fix the number of them for us, approximately? A. Important ones, I can.

Q. First let us take all of them, important and unimportant, and in that connection I will ask you whether you can give us [772] any approximately of the number of such meetings during this period?

A. I can fix the important meetings. I can't fix the number of conversations I had with Mr. Hammond in regard to the Union.

Q. Can you fix them approximately?

A. Can not.

Q. All right.

Now, let us take the ones you described as being the important ones between November 1st, 1938 and 10:00 o'clock in the morning of November 18th, 1938, and I will ask you how many of those conversations you had with Mr. Gordon Hammond concerning this Union?

Mr. Mouritsen: Objected to as indefinite. Does it refer to the same period, November 1st to November 18th?

Mr. Clark: It is in the very question. I will submit it, Mr. Examiner.

(Testimony of E. C. Powell.)

Trial Examiner Lindsay: If he understands the question, he may answer.

Do you know what period he is talking about?

The Witness: Several conversations about it.

Q. (By Mr. Clark) Can you fix the number of them?

A. I would say six or eight, more or less, important ones.

Q. All right.

More than eight?

Mr. Mouritsen: I object to that—— [773]

Trial Examiner Lindsay (Interrupting): Sustained.

Q. (By Mr. Clark) Or less than eight?

Mr. Mouritsen: Objected to as already asked and answered.

Trial Examiner Lindsay: Sustained.

Mr. Clark: Very well.

Q. Now, can you tell us when the first one of these conversations with Mr. Gordon Hammond took place? A. On November 1st. [774]

Q. Are you referring to the conversations you have already told us about as being the first time you discussed this union with Mr. Gordon Hammond?

A. Negotiations.

Mr. Clark: Well, might I have the questions re-read to the witness, Mr. Examiner, and may I ask that that answer go out as not responsive?

Trial Examiner Lindsay: Read the question and the answer, please.

(Testimony of E. C. Powell.)

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I ask that that go out as not responsive and ask that he answer the question if he can do so.

Mr. Mouritsen: I object to the question as being vague and indefinite.

Trial Examiner Lindsay: The answer and the question both may stand.

Mr. Clark: Very well.

Q. When was the next conversation which you say you had with Mr. Gordon Hammond concerning this union during this period of time, namely, from November 1, 1938, to 10:00 o'clock on the morning of November 18th?

Mr. Mouritsen: I object to the question upon the ground it is vague and indefinite, and an unfair question to the witness. There isn't sufficient identification of the [775] conference so that counsel is requiring the witness to testify about.

Mr. Clark: Now may I make a statement before your Honor rules?

Trial Examiner Lindsay: Yes.

Mr. Clark: As I understand the witness' testimony, he said there were six or eight important conversations——

Trial Examiner Lindsay (Interrupting): More or less.

Mr. Clark (Continuing): ——more or less, relative to the union, with Mr. Gordon Hammond dur-

(Testimony of E. C. Powell.)

ing the period November 1st to 10:00 o'clock in the morning of November 18th. I have asked him to give me the first one of those and he has stated that as November 1st.

Trial Examiner Lindsay: About November 1st, he said.

Mr. Clark: About November 1st. Then I asked him whether or not that was the meeting he told us about yesterday, being the first meeting with Mr. Hammond, and he answered "negotiations" which I understand is an affirmative answer—at any rate it is in the record for what it is worth—and now I have asked him for the next time, next one of these six or eight conversations, more or less, and I think I am entitled—

Trial Examiner Lindsay (Interrupting): Ask him for the next conversation.

Mr. Clark: That is all I have done. [776]

Trial Examiner Lindsay: What was the next conversation is what he wants.

The Witness: As I recall, on or about November 6th, which was on Sunday. It was that date, about November 6th, immediately following the meeting of November 5th at O. L. Farr's house.

Mr. Clark: All right.

Q. Now, you say November 6th was on a Sunday?
A. I think it was.

Q. Have you looked at a calendar since yesterday's testimony?
A. Yes.

Q. In order to fix that date, is that right?

(Testimony of E. C. Powell.)

A. No.

Q. Well, is it your testimony that you just happened to look at a calendar for the month of November 1938 since yesterday?

A. I have been refreshing my memory about those dates.

Q. Yes. In other words, you were trying to fix this meeting, weren't you? A. I did fix it.

Q. Apparently (Laughter).

Trial Examiner Lindsay: Let us not have that laughter from anyone.

Q. (By Mr. Clark) Now, where did that meeting take [777] place, that is, the one you say you had with Gordon Hammond on November 6th?

A. J. G. Boswell plant. I don't say it was on the morning of the 6th. I said about November 6th; as I recall it, it was the next day.

Q. Well—very well.

At any rate, this is the second important conversation you had with Mr. Gordon Hammond during this period of time, that is, from November 1st to 10:00 o'clock in the morning on November 18th, isn't that right? A. No, it is not the first.

Q. The second one.

A. Yes, second one.

Q. All right.

Now, where was the conversation held in the Boswell plant, that is, what part of the property?

A. Speaking of this after November 5, the conversation after November 5th? Is that the one you are referring to?

(Testimony of E. C. Powell.)

Q. Yes. I am referring to the second conversation that you have told us about.

A. At the J. G. Boswell plant.

Q. Where on the J. G. Boswell property did this conversation take place?

A. It was in the warehouse.

Q. And was that in the warehouse you described yesterday [778] as the main warehouse?

A. Yes, sir.

Q. And where in the warehouse were you and Mr. Hammond standing at the time you talked.

A. In the main warehouse.

Q. Well, where in the main warehouse?

A. I don't recall the exact spot of that particular conversation.

Q. Where is the main door or main entrance to that warehouse? What part of the building is it on?

Mr. Mouritsen: I object to that as vague and indefinite.

Mr. Clark: I will submit it.

Mr. Mouritsen: What side——

Mr. Clark (Interrupting): ——East, south, west, or north.

Trial Examiner Lindsay: He may answer.

The Witness: I don't know of any main entrance. There are several entrances that are used there. I don't know whether you would call it a main entrance to that warehouse.

Q. (By Mr. Clark): Are the entrances designated by any name?

(Testimony of E. C. Powell.)

A. I recall that on the south side, on the railroad track side, that they are, I believe, numbers on the door. I don't [779] recall numbers on other doors.

Q. Well, what door, if any, were you standing near at the time you had this conversation with Mr. Hammond?

Mr. Mouritsen: Objected to as already asked and answered. The witness stated he does not recall where in the warehouse this particular conversation took place.

Trial Examiner Lindsay: Yes. Proceed.

Q. (By Mr. Clark) Can you locate your position and that of Mr. Hammond in the warehouse any more definitely on this occasion, any more definitely for us than you already have?

A. I can not.

Mr. Mouritsen: Objected to as already asked and answered.

Trial Examiner Lindsay: He has answered.

Q. (By Mr. Clark) Was anyone else present?

A. No one was ever present at conversations I had with Mr. Gordon Hammond along those lines. We were solely alone at all conversations. [780]

Q. I see.

And what information did you give Mr. Gordon Hammond concerning this Union on that occasion?

A. I told him that I had been in on one of the meetings on the 5th, that I had seen the charter of the American Federation of Labor, and I told him the names that I had seen on that charter.

(Testimony of E. C. Powell.)

Q. What were those names?

A. I don't recall the names now. They were fresh in my mind at that time.

Q. Do you recall any of the names now?

A. I don't recall any of the names at this time.

Q. Can't you give us the names of a single one of these several names that appear on that charter?

A. I can't now.

Q. Very well.

Q. What else did you tell Mr. Hammond about this union?

A. I told him of the number of men present at that meeting.

Q. How many did you say were present?

A. Something about twelve, more or less.

Q. What else did you tell him about the Union?

A. I told him I had gotten kicked out during the business end of the meeting, and I didn't obtain very much other than the ones present there.

Q. Did you give him the names of the men that were present? A. Yes. [781]

Q. And what were those names?

A. Mr. Martin, Mr. Spear and Mr. Farr, Mr. George Andrade, Joe Briley, Johnson and myself.

Q. Now, you have given seven. How about the other five that you told him were there?

A. Twelve, more or less, I think I said.

Q. Well, how much less than twelve?

A. I don't recall now.

(Testimony of E. C. Powell.)

Q. Can you name any more of the people that you told Mr. Hammond were at the meeting?

A. At that time I gave him all of the names that were at that meeting. I don't recall now just who all they were.

Q. I see.

Now, what other information, if any, concerning this Union, did you give Mr. Hammond on this occasion, that is, the conversation you have placed as being about November 6th?

A. I told him that I had gotten in on the meeting, and told him the names of the ones present, and when the business end of the meeting came up, I wasn't a member and I got kicked out, and I would have to make application for membership to get anything else.

Q. Did you tell him that you intended to apply for membership in the Union? A. I did.

Q. And did he tell you that that would not have any effect [782] whatsoever upon your job at Boswell Company's? A. He did.

Q. When you signed the application for membership in this Union on November 12th—November 11th, 1938, did you really in good faith intend to become a member of that Union?

A. Yes, sir. I did become a member of that Union.

Q. You intended to obey the oath you took, and the rules of the Union, is that not right?

A. I did obey the oath I took.

(Testimony of E. C. Powell.)

Q. Didn't you later have conversations with Mr. Hammond at which you gave him information about this Union?

A. Not in revealing any Union activities, no, not any secrets of the Union activities.

Q. I see.

In other words, after this conversation which you placed as being about November 6th, you never again gave Mr. Gordon Hammond any authentic information about the Union, is that true?

Mr. Mouritsen: May I have the question read?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: Not after November 16th.

Q. (By Mr. Clark) Well, you did, then, have further conversations with him at which you gave him information about the [783] Union after you had filed this application on November 11th, is that right?

A. That is right. After I filed the application, but not after I took oath in the membership.

Q. I see.

In other words, your oath was sacred to you, wasn't it?

A. Sure.

Q. Yes.

Now, will you please place for us, as nearly as you can, Mr. Powell, the next meeting, if any, or, that is, the next conversation, if any, which you

(Testimony of E. C. Powell.)

had with Mr. Gordon Hammond concerning this Union after the one you have just told us about as taking place on or about November 6th?

A. I told Mr. Hammond later I had joined the Union.

Q. No, no. You misunderstand me.

Trial Examiner Lindsay: Read the question.

Q. (By Mr. Clark) I want you to give us the date of the next conversation, if any?

Trial Examiner Lindsay: That is after the second, the one you have described.

The Witness: On or about the 12th I told him I had been at a meeting with Lonnie Farr and made an application——

Mr. Clark (Interrupting): May I have him fix it?

Trial Examiner Lindsay: What do you mean?

Mr. Clark: I asked him when it was. He started with [784] something I didn't get.

The Witness: You interrupted me before I had time to finish.

Mr. Clark: May I have the record read back?

Trial Examiner Lindsay: Yes, read the answer.

(The answer referred to was read by the reporter, as set forth above.)

The Witness: I did. [785]

Mr. Clark: May I ask that all of that answer go out except his statement that it was on or about the 12th as being not responsive.

(Testimony of E. C. Powell.)

Trial Examiner Lindsay: It may remain.

Mr. Clark: Very well.

Q. That was on or about the 12th of November?

A. Yes.

Q. Where did this conversation take place?

A. In the warehouse.

Q. On the Boswell property? A. Yes, sir.

Q. What time of day was it?

A. I don't recall the time of day.

Q. Can you tell us whether it was in the morning or afternoon?

Mr. Mouritsen: Objected to as already asked and answered.

Mr. Clark: All right.

Q. Can you tell us where in the warehouse the conversation took place there?

A. I could not.

Q. What is your answer? A. I could not.

Q. Can you tell us whether it was on the south or the north side of the warehouse? [786]

A. Nor east nor west.

Q. I see. You have no recollection at all about the place in the warehouse or the time of day, is that right? A. No, I don't.

Q. All right.

Now, will you tell us, Mr. Powell, what information you gave to Mr. Gordon Hammond concerning the union on this occasion, namely, November 12th?

A. I told him the number that had made application that night with myself.

(Testimony of E. C. Powell.)

Q. What did you tell him about that?

A. I told him Mr. Winslow and Mr. Johnston and I think Mr. Ely, if I recall it now, had made applications, Elgin Ely.

Q. Did you tell him anything else about this union?

A. I don't recall that I told him anything else at that time.

Q. Now, this was after you yourself had made application, of course? A. Yes.

Q. At the meeting on November 5th, or whenever it was that you had first attended a gathering of the members of this union, did anyone show you a copy of the laws of the union or rules and regulations?

A. What meeting was this now? The 5th, you say?

A. At the 1st gathering of the members of this union that [787] you ever attended, whenever it was.

A. Did anyone tell me the rules and regulations at that meeting?

Q. Yes. A. No.

Q. Did anyone show you a copy of the constitution and by-laws of the American Federation of Labor?

A. No. They showed me nothing down there.

Q. Did they make any explanation to you concerning what the union stood for or its rules or anything about its constitution?

A. They explained along that line.

(Testimony of E. C. Powell.)

Mr. Mouritsen: I object to that as vague and indefinite, no time fixed.

Mr. Clark: The time is fixed, Mr. Examiner. It was at the first gathering, whenever it was, of the members of this union that this gentleman attended.

Trial Examiner Lindsay: He may answer.

The Witness: The principles were explained by Mr. Prior.

Q. (By Mr. Clark) Were you told at that time, that is, at this first gathering of union members, that you ever attended, that one of the things expected of you if you joined the union was to keep secret the matters vital to the union? [788]

A. That wasn't revealed that night. That was the night of November 16th that I was informed of those by oath.

Q. Did you read this application which has been marked Respondent Boswell's Exhibit No. 5 and which you handed me this morning before you signed it? A. Yes, I think so.

Q. Did you understand it?

A. I think I understand it.

Q. Did you particularly read this sentence appearing in the application: "Should my application meet with your approval, I promise faithful obedience to the Laws, Rules and Regulations of your union."

A. If that is on there, I read it.

Q. Yes.

Now, what else on the morning of November 12,

(Testimony of E. C. Powell.)

1938, did you tell Mr. Gordon Hammond concerning this union?

A. I didn't say on the morning of the 12th.

Mr. Clark: I am sorry, and I withdraw that. It is entirely unintentional. I withdraw the question and ask that it be stricken.

Q. What else, if anything, did you say to Mr. Gordon Hammond respecting this union during the conversation which you placed as having occurred about November 12th? [789]

A. I don't recall anything other than what I have stated.

Q. Very well.

When did you next have a conversation with Mr. Gordon Hammond respecting this Union?

A. After November 16th.

Q. After November 16th? A. Yes.

Q. That is, after you had taken your oath to the Union? A. Yes, that is right.

Q. And after you had promised not to reveal any of the secrets of the Union; is that right?

A. That is right.

Q. And where did this conversation occur, please?

A. As I recall, in the office building.

Q. You mean at the Boswell plant?

A. Yes.

Q. And in whose office?

A. I don't know. I can't say what office is designated other than Mr. Hammond's office. I am not

(Testimony of E. C. Powell.)

familiar with the other office buildings—the other rooms in that building.

Q. Do you know which office in that building is known as Mr. Gordon Hammond's office?

A. Yes, sir.

Q. And was that the office that you had your conversation in? [790]

A. No, sir. That wasn't the office. It was in the same building, but not that room.

Q. Where is the office located in the building in which you had your conversation, with respect to Gordon Hammond's office?

A. It is on the South side, the left—the book-keeping department—the room to the left of the bookkeeping department.

Q. Is it directly next to Gordon Hammond's office?

A. No, it is on the opposite end of the building.

Q. It is on the opposite end of the building.

And you don't know whose office it is?

A. I don't.

Q. Do you know which office in that building is Mr. Louie Robinson's office?

A. Well, I think I do.

Q. Was it in Mr. Louie Robinson's office?

A. It was not.

Q. When did this conversation take place?

A. I don't recall.

Q. I think you said sometime after November 16th; was that your answer?

A. Yes.

(Testimony of E. C. Powell.)

Q. Was it before 10:00 o'clock in the morning on November 18th? [791]

A. I don't remember.

Q. Well, can't you tell us whether it was before or after you left the Boswell property on the morning of November 18th?

A. I had a conversation with Mr. Hammond after—or before the run-off on the morning of the 18th.

Q. I am talking about the conversation you have been calling our attention to as having taken place in the office building.

When did that one occur?

A. I recall having two or three conversations with Mr. Hammond in the office building.

Trial Examiner Lindsay: The one he is talking about is the one that took place, as you said, right after the 16th, is that right?

Mr. Clark: That is correct, Mr. Examiner. And I would like to call the witness's attention to the fact that he has specifically referred, now, to conversations with Mr. Hammond on this subject matter, that is, concerning the Union, on November 1st, about November 1st, about November 6th, and about November 12th. And I am asking him for the next one; and he placed it at sometime after November 16th.

Q. I would like you to give the date to us as nearly as you can?

(Testimony of E. C. Powell.)

A. After November 16th—it might have been the day after or the day—within a few days after November 16th.

Q. Well, can you tell, Mr. Witness, whether or not this [792] conversation to which you now refer—

A. (Interrupting): I can't tell you.

Q. Just a moment, please.

Which is the fourth, or the sixth or the eighth, more or less, you told us about, took place before or after 10:00 o'clock of the morning of November 18th? A. I don't remember.

Q. You don't remember?

A. I don't remember.

Q. Now, that is the best you can do for us in fixing the time, is that right?

A. Well, I would say I don't think it was before 10:00 o'clock that morning, because I had driven a pick-up on November 16th belonging to the Company to this Union meeting, and I didn't feel very well the next morning, and I didn't think I would go to work; and I believe it was after 10:00 o'clock that I went to work that morning, if I recall it.

Q. Are you telling us, then, in effect, that the conversation took place, as nearly as you can remember it, after 10:00 o'clock on the morning of November 17th, it being the day after the November 16th meeting?

A. As I recall it now, it was after that time.

Q. Well, do I understand that it took place on November 17th?

(Testimony of E. C. Powell.)

A. It might have. I don't know. After November 16th. I think it was the next day. I am not positive. I am positive [793] I had a pick-up truck, and I didn't go to work until later in the day that morning. As I recall it, I didn't go to work before 10:00 o'clock.

Q. Do you think the conversation with Mr. Gordon Hammond to which you now refer took place shortly after 10:00 o'clock on the morning of November 17th, 1938, that is, the day after your Union meeting of November 16th?

A. That conversation could have been the next day. It might have been that day. I don't recall whether it was that same day or not.

Q. Do you mean it could have been after 10:00 o'clock on the morning of November 18th?

A. I don't think so. It could have been.

Q. What is your best recollection on it?

A. I think it was that day.

Q. You think it was the 17th? A. Yes.

Q. All right.

And you think it was shortly after 10:00 o'clock, is that right? A. Yes.

Q. And it was with Mr. Gordon Hammond, was it? A. I am sure.

Q. At any time during that conversation, did you see Mr. Prior or Mr. Martin or Mr. Farr in the administration building [794] of the Company?

A. I heard they were down there. I didn't see them.

(Testimony of E. C. Powell.)

Q. And from whom did you hear that?

A. I don't recall.

Q. Have you any recollection of hearing that from anyone?

A. I don't recall.

Mr. Mouritsen: I object to that as already asked and answered.

Mr. Clark: You don't recall. All right.

Q. Of course, no one else was present at this conversation, is that true?

A. No. Never no one present at those conversations, as I said before.

Q. Will you tell us, Mr. Powell, what information, if any, you gave to Mr. Gordon Hammond on this occasion concerning the Union which you joined the preceding evening?

A. I told him I had become a member of the Union, and I couldn't reveal any more secrets.

Q. I see.

Did he insist that you reveal something about it?

A. He said it wouldn't matter. He said it was all "pooney", a bunch of fellows claiming something they couldn't back up, and after I found it was that way, I came around.

Q. Are you sure about that conversation, about it being all "hooney" and being started by a bunch of fellows that can't [795] back it up, that it took place the morning of the 17th, or wasn't that several days after the 18th on an entirely different occasion?

Mr. Mouritsen: May I have that question read? They are so compound, Mr. Examiner, that I hate to interrupt—

(Testimony of E. C. Powell.)

Mr. Clark (Interrupting): I will submit it, Mr. Examiner.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, set forth above.)

The Witness: As I recall that expression being made two or three times, two or three different meetings about it being "hooley."

Q. (By Mr. Clark): Were there two or three of these conversations between you and Mr. Gordon Hammond at which he in substance or effect said to you it didn't make any difference to him whether you joined the Union, that it was all "hooley" anyway, and that it was simply a bunch of fellows doing something they couldn't back up, and after you found out about it, you could come back?

Mr. Mouritsen: I object to that as a compound question.

Mr. Clark: I am trying to give the gist of the conversation.

Trial Examiner Lindsay: If the witness understands it, he may answer.

The Witness: Well, he was referring to come back and let [796] him know. I hadn't gone any place at that time. I don't know what the interpretation of that meeting would be. I was still there.

Mr. Clark: I don't think you do understand the question, so let me direct your attention to part of the transcript of yesterday.

(Testimony of E. C. Powell.)

Trial Examiner Lindsay: Again, I kindly request the attorney to simplify his questions so that they are understandable.

We will have a ten minute recess.

(At this point, a short recess was taken, after which proceedings were resumed as follows:) [797]

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: Now I would like to refer you, Mr. Mouritsen, to page 627, line 18, of the transcript in this case, over to line 11, page 629.

Mr. Mouritsen: I have it.

Q. (By Mr. Clark): Mr. Powell, will you please just read to yourself the part I have indicated, from line 18, page 627, over to line 11, page 629.

A. (Examining document).

Q. Just down to line 11, Mr. Powell.

A. (Examining document).

Q. Now, have you read the portion of the transcript I have called your attention to?

A. Yes, sir.

Q. I will ask you whether or not on yesterday, May 24, 1939, in this proceeding, the following questions were asked you by Mr. Mouritsen, and whether you gave the following answers, commencing at page 627, line 18:

“Q. Now, what was the approximate date of the conversation that you had with Mr. Gordon

(Testimony of E. C. Powell.)

Hammond after November 18, 1938, and after Clyde Sitton told you that Hammond wanted to see you?

“A. I place it around the 20th.

“Q. Of what month and of what year?

“A. November, 1938. [798]

“Q. And where did you see Mr. Hammond on that occasion?

“A. It was in the main office building.

“Q. Was anyone else there other than yourself and Gordon Hammond?

“A. Not within hearing.

“Q. Will you state what you said to Mr. Hammond and what Mr. Gordon Hammond said to you?

“A. Mr. Hammond said, ‘Coon,’ he says, ‘I haven’t got anything against you.’

“Mr. Clark: May I have that read back, Mr. Examiner. I can’t follow it.

“(The record referred to was read by the reporter, as set forth above.)

“The Witness (Continuing): —‘You can go back to work if you want to.’

“I said, ‘Well, I would be afraid to go back to work after the fellows did what they did the other day.’

“He said, I need not worry about that, that he would go out there and tell those fellows to lay off and they would do so.

(Testimony of E. C. Powell.)

“Q. (By Mr. Mouritsen): Did you say anything further at that time?

“A. I told him that I better—I joined the union and I better string along with them, find out what the outcome [799] would be.

“Mr. Clark: May I have that answer re-read?

“Mr. Mouritsen: ‘I joined the union, I better string along with them, find out what the outcome would be.’

“Mr. Clark: Is that the answer?

“The Witness: That is the answer.

“Q. (By Mr. Mouritsen): Did Mr. Hammond say anything further after you told him you were going to string along with the union?

“A. He said, ‘After I find out that it was all “hooley”—‘that a bunch of fellows claiming something they couldn’t back up, after I found out it was all “hooley,” I would come back, and if there was anything there, he would give it to me.’ ”

Q. Now, were those questions asked you yesterday and did you give those answers?

A. In relation to that, yes, substantially.

Q. Well, weren’t the questions asked you and weren’t the answers given by you just as I read them and as the reporter took them down?

A. Evidently they were, in substance; it is that way.

Q. Yes.

(Testimony of E. C. Powell.)

As a matter of fact, the conversation which you told us just before the recess this morning took place according to your recollection on or about November 17th, some time after [800] 10:00 o'clock, in fact took place on November 20th, isn't that true?

Mr. Mouritsen: May I have that question read, Mr. Examiner? I must object to these long and involved questions. There are several questions in one. I can't follow counsel myself. I don't know whether I should interpose an objection or not.

Mr. Clark: I am sorry. That is the only way I am able to examine a witness, and I don't know any other way to do it, particularly with a witness who is like this. I will submit the objection and take the Court's ruling.

Trial Examiner Lindsay: May I have the question, please?

(The record referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: I object to the question upon the ground it is confusing, misleading and unfair.

Mr. Clark: Submit it.

Trial Examiner Lindsay: Well, I feel this way about it, that the cross-examination was regarding a conversation on November 17th. Now, on his direct examination there was also a conversation held on or about the 20th, following the conversation of the 17th. If he understands that question, he may answer it.

Now, may I have it read again? [801]

(Testimony of E. C. Powell.)

(The record referred to was read by the reporter, as set forth above.)

The Witness: The next conversation I recall after November 18th was some ten days, more or less, after that Clyde Sitton came to my house and told me that Gordon Hammond wanted to see me, to come down around—he would be in his office around 9:00 or 10:00 o'clock on a certain night—I don't recall just what night it was—about that time—and I, on my way to the office, learned that they were having——

Mr. Clark (Interrupting): Just a minute. I will ask that that go out, may it please the Examiner.

Trial Examiner Lindsay: He may answer.

Mr. Clark: What he learned on the way to his office is immaterial.

Trial Examiner Lindsay: I said he may answer. You may have an exception.

The Witness (Continuing): I learned that they were having a dinner at Tommy Hammond's residence that night. I talked with Kelly Hammond at his home and didn't go down and fill that appointment at that time.

Mr. Clark: May I have the last?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.) [802]

Mr. Clark: Now, may I have my question re-read to the witness, Mr. Examiner?

(Testimony of E. C. Powell.)

Trial Examiner Lindsay: Yes. Read the first question.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I move to strike the answer as not responsive, your Honor.

Trial Examiner Lindsay: Yes. It may go out. Answer the question.

The Witness: I don't recall at that time—it was that particular time.

Q. (By Mr. Clark): Well, did you have a conversation with Mr. Gordon Hammond on the morning of November 17th in the main office at the Boswell plant?

A. On the morning of the 18th I had a conversation.

Mr. Clark: Now, may I please——

Trial Examiner Lindsay (Interrupting): Yes.

Mr. Clark (Continuing): ——be allowed to complete my question? I will reframe it.

Q. Did you have a conversation with Mr. Gordon Hammond on the morning of November 17th in the main office at the Boswell plant some time after 10:00 o'clock at which he said to you, in substance or effect, that after you found out that it was all hokey that a bunch of fellows claiming something they couldn't back up, and if you would then come back he [803] would give you a job and——(Pause)

A. I had a conversation with Mr. Gordon as I recall about that time, on the morning of the 17th,

(Testimony of E. C. Powell.)

that I had joined the union, was initiated on the night of the 16th, and that I wouldn't be able to reveal any more union activities. That as I recall, that statement was made, when I found out it was all poeey, that I would come around. I hadn't left the plant at that time at all.

Q. You hadn't what?

A. I hadn't left; still at the plant; still employed at the plant.

Q. So it was before 10:00 o'clock on the morning of the 18th, isn't that right?

A. I didn't say on the 18th.

Q. Well, I said it was before——

Trial Examiner Lindsay (Interrupting): The record shows he said it was on the 17th.

Q. (By Mr. Clark): 10:00 o'clock on the 18th, isn't that true?

Mr. Mouritsen: I object to the question on the ground——

Mr. Clark (Interrupting): I will withdraw the last.

Q. Will you please tell us whether or not you likewise had a conversation with Mr. Gordon Hammond in the main office at the Boswell plant on November 20, 1938, at which he said to you, in substance or effect, that after you found [804] out that it was all hooley and that a bunch of fellows were claiming something they couldn't back up, if you would come back he would give you a job?

A. I had a conversation about that time, in reference to a letter I had received from the company

(Testimony of E. C. Powell.)

asking him what that meant.

Q. Have you that letter? A. Yes.

Q. May I have it?

A. If it is okay with my counsel.

Mr. Mouritsen: May I see it?

(The document referred to was passed to Mr. Mouritsen.)

(The document referred to was passed to Mr. Clark.)

Mr. Clark: Pardon me a moment, Mr. Examiner.
Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark): I will show you, Mr. Powell, the letter which Mr. Mouritsen has just handed me, and you have just delivered to him, which is purportedly from J. G. Boswell Company, by Louis T. Robinson, addressed to Mr. E. C. Powell, Corcoran, California, and dated November 28, 1938, and I will ask you if that is the letter you referred to.

A. (Examining document): That is the letter I referred to.

Mr. Clark: I will ask that it be marked for identification, your Honor.

(Thereupon the document above referred to was received and marked Respondent Boswell's [805] Exhibit No. 6 for identification.)

Mr. Clark: Also may I ask that the envelope in—which was handed me with the letter be marked as part of this exhibit or annexed to it?

Trial Examiner Lindsay: It may be marked as a part of the exhibit.

(Testimony of E. C. Powell.)

Q. (By Mr. Clark): Now I will ask you, Mr. Powell, whether or not you received Respondent Boswell's Exhibit 6 for identification which purports to be a letter addressed to you under date of November 28, 1938, on or about that date?

A. I received that letter, yes.

Q. I see.

Now, are you familiar with Mr. Louis Robinson's signature? A. No, I am not.

Q. Did you sign the return receipt for this letter?

A. A registered letter—I think possibly it was.

Q. I see.

And is this the letter that you, or the document that you referred to in your examination a few moments ago as being your reason for talking to Mr. Sitton?

A. No. That was the reason, the definite date about the time of that conversation.

Q. That is what I mean.

A. In reference to that. [806]

Q. In other words, this is the letter you referred to in your attempt to establish the date of your conversation with Mr. Sitton in which, I believe you told us, he said that Mr. Hammond wanted to see you?

Trial Examiner Lindsay: The——

Mr. Clark (Interrupting): I will withdraw it all.

Trial Examiner Lindsay (Continuing): The answer on that——

(Testimony of E. C. Powell.)

Mr. Clark (Interrupting): I will withdraw it all.

Q. Is this the letter, Mr. Powell, which you referred to in connection with your attempt to establish the date of your conversation with Mr. Sitton?

A. That is not the letter to establish the date with Sitton; the conversation I had with Mr. Hammond in his office that I described in reference to this letter, what the meaning of this letter was.

Q. All right.

This is the letter then that you referred to in attempting to establish the date of your conversation with Mr. Gordon Hammond, then? A. Yes.

Q. Is that right? A. Yes. [807]

Q. And is that the conversation in which Mr. Gordon Hammond made reference about the Union being "hooey?"

A. He didn't have a thing against me, that I could come back to work. I referred to that letter, asked him if he ordered the sending of that letter.

Q. During that conversation, is that right?

A. Yes.

Mr. Clark: We will offer the letter and envelope in evidence, your Honor, and ask that it be marked.

Trial Examiner Lindsay: It has been marked for identification. All you have to do is to offer it.

Mr. Clark: I offer it in evidence.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: Received.

(Thereupon, the document above referred to was received in evidence and marked as Respondent Boswell Company's Exhibit No. 6.)